

**Johnsen, Steven (MA)**

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**From:** Giannetti, Gillian <ggiannetti@nrdc.org>  
**Sent:** Friday, April 06, 2018 5:35 PM  
**To:** Secretary Perry; Walker, Bruce; Jereza, Catherine  
**Cc:** Kennedy, Kit; Chen , Jennifer; mpanfil@edf.org  
**Subject:** Motion to Intervene: FirstEnergy Section 202(c) Request -- EDF, NRDC, and SPP  
**Attachments:** Motion to Intervene of EDF, NRDC, and SFP 04062018.pdf

Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza:

Please find the attached Motion to Intervene of Environmental Defense Fund, Natural Resources Defense Council, and Sustainable FERC Project in FirstEnergy's emergency request pursuant to Section 202(c) of the Federal Power Act.

Thank you and have a lovely weekend,

Gillian R. Giannetti

—  
**GILLIAN R. GIANNETTI, ESQ.**  
*Staff Attorney*

**NATURAL RESOURCES DEFENSE COUNCIL**  
1152 15TH STREET NW, SUITE 300  
WASHINGTON, DC 20005  
T 202.717.8350  
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NRDC.ORG

718 APR 9 2018 26

UNITED STATES OF AMERICA  
BEFORE THE DEPARTMENT OF ENERGY

Request for Emergency Order Pursuant )  
To Federal Power Act Section 202(c) By )  
FirstEnergy Solutions Corp. )       DOE Docket No. \_\_\_\_\_

**MOTION TO INTERVENE AND PROTEST OF ENVIRONMENTAL DEFENSE FUND,  
NATURAL RESOURCES DEFENSE COUNCIL, AND THE SUSTAINABLE FERC PROJECT**

Pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission's ("FERC") Rules of Practice and Procedure,<sup>1</sup> Environmental Defense Fund ("EDF"), Natural Resources Defense Council ("NRDC"), and Sustainable FERC Project ("SFP") move to intervene in the above-captioned matter.

**I. BACKGROUND**

On March 28, 2018, FirstEnergy Solutions Corp. ("FES") announced its plans to retire three nuclear generation facilities in 2020 or 2021.<sup>2</sup> The following day, FES filed a request for an emergency order with the United States Department of Energy ("DOE")<sup>3</sup> under Section 202(c) of the Federal Power Act.<sup>4</sup> FES requested that all merchant coal and nuclear generating units within PJM Interconnection ("PJM") with at least 25 days of onsite fuel be provided non-market, cost-of-service rates and guaranteed profits for at least four years (the "Profit Guarantee Request"). On March 30, 2018, EDF and NRDC filed a letter with DOE urging DOE to reject FES's Profit Guarantee Request.<sup>5</sup>

**II. SERVICE OF DOCUMENTS**

EDF, NRDC, and SFP designate the following persons to receive service and all communications on their behalf regarding this proceeding:

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<sup>1</sup> 18 C.F.R. §§ 385.211 and 385.214.

<sup>2</sup> News Release, FirstEnergy Solutions Files Deactivation Notice for Three Competitive Nuclear Generating Plants in Ohio and Pennsylvania, PR NEWSWIRE (Mar. 28, 2018, 17:06 ET), <https://www.prnewswire.com/news-releases/firstenergy-solutions-files-deactivation-notice-for-three-competitive-nuclear-generating-plants-in-ohio-and-pennsylvania-300621346.html>; Letter from FES to the Honorable James Richard Perry (Mar. 29, 2018), at 8, 20 (hereinafter "Profit Guarantee Request").

<sup>3</sup> See generally Profit Guarantee Request.

<sup>4</sup> 16 U.S.C. § 824a(c)(1).

<sup>5</sup> Letter from EDF and NRDC to the Honorable Rick Perry, Assistant Secretary Bruce Walker, and Deputy Assistant Secretary Catherine Jereza (Mar. 30, 2018).

**EDF**

Michael Panfil  
Senior Attorney, Director of  
Federal Energy Policy  
Environmental Defense Fund  
1875 Connecticut Avenue, NW  
Washington, DC 20009  
[mpanfil@edf.org](mailto:mpanfil@edf.org)

**NRDC**

Katherine Kennedy  
Senior Director, Climate & Clean Energy  
Natural Resources Defense Council  
40 W. 20<sup>th</sup> Street  
New York, NY 10011  
212-727-4637  
[kkennedy@nrdc.org](mailto:kkennedy@nrdc.org)

**Sustainable FERC Project**

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Jennifer Chen  
Attorney  
Natural Resources Defense Council  
1152 15<sup>th</sup> Street, NW, Suite 300  
Washington, DC 20005  
202-289-2399  
[jchen@nrdc.org](mailto:jchen@nrdc.org)

Gillian Giannetti  
Attorney  
Natural Resources Defense Council  
1152 15<sup>th</sup> Street, NW, Suite 300  
Washington, DC 20005  
202-717-8350  
[ggiannetti@nrdc.org](mailto:ggiannetti@nrdc.org)

**III. MOTION TO INTERVENE**

EDF, NRDC, and SFP move to intervene in the above-captioned matter because this proceeding will directly impact the core missions of EDF, NRDC, SFP, and their members. Specifically, EDF is a national non-profit membership organization engaged in linking science, economics, and law to create innovative, equitable, and cost-effective solutions to society's most urgent environmental problems. With over 2 million members and engaged participants nationwide, including within PJM, EDF has been an active environmental and energy advocate since 1967. NRDC is a national non-profit membership organization with more than 3 million members and engaged community participants, including within PJM. NRDC is committed to the preservation and protection of the environment, public health, and natural resources. To this end, NRDC is actively involved in advancing cost-effective environmental solutions that reduce greenhouse gas emissions and other dangerous forms of air pollution and accelerate the deployment of energy efficiency and renewable energy. EDF and NRDC regularly engage on issues relating to reliability, resilience, and markets for electric energy, capacity, and ancillary services, including through proceedings before FERC, the North American Electric Reliability Corporation ("NERC"), DOE, Regional Transmission Organizations ("RTOs"), and state regulatory authorities,

among others. EDF and NRDC support electric regulatory priorities that provide robust reliability and resilience in a manner that facilitates the integration of clean energy and is affordable to customers.

SFP is an education and advocacy initiative that represents a consortium of national and regional environmental, consumer, and energy policy non-governmental organizations with members throughout the United States, including within PJM. SFP focuses on accelerating the deployment of renewable energy and demand-side resources by advocating cost-effective electric regulatory policies that remove barriers for these resources and ensure more just and reasonable rates. SFP has participated in stakeholder discussions involving resilience and reliability at FERC, DOE, and RTOs, among others.

FES's proposal would undermine the achievement of EDF's, NRDC's, and SFP's core missions. Each organization's membership would be harmed by the monetary, environmental, and public health impacts of the Profit Guarantee Request. EDF, NRDC, and SFP are not now, nor will they be, adequately represented by any other party in these proceedings. Accordingly, under Rule 214, EDF, NRDC, and SFP have a significant and direct interest in this proceeding and the interventions are in the public interest. Thus, EDF, NRDC, and SFP move to intervene under Rule 214.

#### **IV. STATEMENT OF OPPOSITION AND PROTEST**

Pursuant to Rule 214(b)(1), EDF, NRDC, and SFP strongly oppose FES's Profit Guarantee Request. The Profit Guarantee Request suffers from already examined and dismissed errors and fundamental deficiencies. Namely, the request: (1) is premised on legal flaws; (2) ignores prior and current FERC activity and finding; (3) would impose enormous cost upon American homes and businesses without benefit; and (4) would undermine the competitive marketplace. EDF and NRDC incorporate by reference the arguments made in their March 30, 2018 letter.<sup>6</sup> EDF, NRDC, and SFP reserve the right to supplement this pleading to explain, in greater detail, why the Profit Guarantee Request is unlawful and should be rejected.

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<sup>6</sup> *Id.*

V. CONCLUSION

For the foregoing reasons, EDF, NRDC, and SFP respectfully request that DOE grant this Motion to Intervene and make EDF, NRDC, SFP parties in the above-captioned proceeding, with all rights attendant thereto, and that DOE reject FES's Profit Guarantee Request.

Respectfully submitted,

/s/ Michael Panfil

Michael Panfil  
Senior Attorney, Director of Federal Energy Policy  
Environmental Defense Fund  
1875 Connecticut Avenue, NW  
Washington, DC 20009  
T 202-572-3280  
[mpanfil@edf.org](mailto:mpanfil@edf.org)

/s/ Katherine Kennedy

Katherine Kennedy  
Senior Director, Climate & Clean Energy  
Natural Resources Defense Council  
40 W. 20th Street  
New York, NY 10011  
T 212-727-4637  
[kkennedy@nrdc.org](mailto:kkennedy@nrdc.org)

/s/ Jennifer Chen

Jennifer Chen  
Attorney  
/s/ Gillian Giannetti  
Gillian Giannetti  
Attorney  
Sustainable FERC Project  
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T 202-278-2399  
T 202-717-8350  
[jchen@nrdc.org](mailto:jchen@nrdc.org)  
[ggiannetti@nrdc.org](mailto:ggiannetti@nrdc.org)

**CERTIFICATE OF SERVICE**

I hereby certify that, to the best of my knowledge, I have this 6<sup>th</sup> day of April 2018 served the foregoing upon each person designated on the service list compiled by the Secretary in this proceeding.

/s/ Gillian Giannetti  
Gillian Giannetti

Rebecca L. Shelton

202 585 6911 direct  
rshelton@thompsoncoburn.com

April 6, 2018

**VIA U.S. MAIL AND ELECTRONIC MAIL**

The Honorable James Richard Perry  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585

Mr. Bruce Walker  
Assistant Secretary  
Office of Electricity Delivery and Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585

Ms. Catherine Jereza  
Deputy Assistant Secretary  
Office of Electricity Delivery and Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585

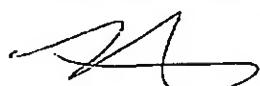
**Re: Petition to Intervene of Old Dominion Electric Cooperative**

Dear Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza:

Enclosed please find the Petition to Intervene of Old Dominion Electric Cooperative in the proceeding concerning FirstEnergy Solutions Corp.'s Request for Emergency Action under Section 202(c) of the Federal Power Act.

Please contact the undersigned if you have any questions concerning this matter.

Respectfully Submitted,



Rebecca L. Shelton  
Counsel for Old Dominion Electric Cooperative

UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY

**PETITION TO INTERVENE OF  
OLD DOMINION ELECTRIC COOPERATIVE**

## I. INTRODUCTION

This proceeding involves a pending request by FirstEnergy Solutions Corp. (“FirstEnergy Solutions”), on behalf of its subsidiaries, under Section 202(c) of the Federal Power Act (“FPA”), 16 U.S.C. § 824a(c) (“Request”). FirstEnergy filed its Request with the Department of Energy (“DOE”) on March 29, 2018, asking that the Secretary of Energy (“Secretary”) “find that an emergency condition exists in the footprint of the PJM Interconnection, L.L.C. (“PJM”) that requires immediate intervention by the Secretary, in the form of a Section 202(c) emergency order . . .” Request at 1. FirstEnergy Solutions has asked that the Secretary direct certain existing nuclear and coal generators to enter into contracts with PJM to provide electric energy, capacity, and ancillary services that FirstEnergy Solutions alleges are “needed to maintain the stability of the electric grid,” and to require PJM to compensate the nuclear and coal units “for the full benefits they provide to energy markets and the public at large.” *Id.*

By this submittal, Old Dominion Electric Cooperative (“ODEC”) hereby petitions to intervene in this proceeding.

## **II. COMMUNICATIONS**

Communications regarding this matter should be addressed to the following persons, who also should be designated for service on the official list for this proceeding:

Adrienne E. Clair  
Rebecca L. Shelton  
Thompson Coburn LLP  
1909 K Street, N.W., Suite 600  
Washington, D.C. 20006-1167  
(202) 585-6900  
(202) 585-6969 (fax)  
[aclair@thompsoncoburn.com](mailto:aclair@thompsoncoburn.com)  
[rshelton@thompsoncoburn.com](mailto:rshelton@thompsoncoburn.com)

## **III. PETITION TO INTERVENE**

ODEC is a not-for-profit power supply electric cooperative, organized and operating under the laws of Virginia and subject to the jurisdiction of the Federal Energy Regulatory Commission. ODEC is a generation-owning utility that supplies capacity and energy to its eleven electric distribution cooperative members, all of which are located within the PJM control area. ODEC is a network transmission customer of PJM, as well as a PJM Transmission Owner. As a Transmission Owner and load-serving entity in the PJM region, ODEC stands to be directly impacted by FirstEnergy Solutions' Section 202(c) request. Therefore, ODEC has a direct interest in this proceeding, and its interest cannot be adequately represented by any other entity.

#### IV. CONCLUSION

WHEREFORE, for the foregoing reasons, ODEC requests that the DOE grant ODEC's petition to intervene, with all rights attendant thereto.

Respectfully submitted,

/s/ Adrienne E. Clair  
Adrienne E. Clair  
Rebecca L. Shelton  
Thompson Coburn LLP  
1909 K Street, N.W., Suite 600  
Washington, D.C. 20006-1167  
(202) 585-6900  
(202) 585-6969 (fax)  
aclair@thompsoncoburn.com  
rshelton@thompsoncoburn.com

*Attorneys for Old Dominion Electric  
Cooperative*

Dated: April 6, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that I have, on this 6<sup>th</sup> day of April, 2018, caused a copy of the foregoing document to be served, via electronic mail, upon representatives for FirstEnergy Solutions and other entities that may be directly affected by the Section 202(c) Request.

*/s/ Rebecca L. Shelton*

Rebecca L. Shelton

Law Offices of:

Thompson Coburn LLP  
1909 K Street, N.W., Suite 600  
Washington, D.C. 20006-1167  
202.585.6900  
202.585.6969 (facsimile)

COMMONWEALTH OF PENNSYLVANIA

Document 31



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
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FAX (717) 783-7152  
[consumer@paoca.org](mailto:consumer@paoca.org)

April 6, 2018

**Via Electronic Mail**

The Honorable James Richard Perry  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585  
[the.secretary@hq.doc.gov](mailto:the.secretary@hq.doc.gov)

Mr. Bruce Walker  
Assistant Secretary, DOE Office of Elec. Delivery & Energy Reliability  
Office of Electric Reliability and Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585  
[bruce.walker@hq.doe.gov](mailto:bruce.walker@hq.doe.gov)

Ms. Catherine Jereza  
Deputy Assistant Secretary  
Office of Electricity Delivery and Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585  
[catherine.jereza@hq.doe.gov](mailto:catherine.jereza@hq.doe.gov)

**RE: Motion of Pennsylvania Office of Consumer Advocate**

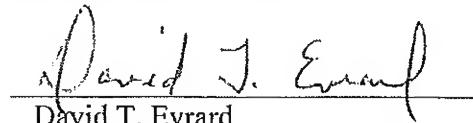
Dear Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza:

Attached is Pennsylvania Office of Consumer Advocate's (PA OCA) Motion to Intervene in the proceeding concerning FirstEnergy Solutions Corp.'s (FES) Request For Emergency Action under Section 202(c) of the Federal Power Act. Under Pennsylvania law, PA OCA is the state agency charged with representing the interests of public utility consumers in matters before state and federal regulatory bodies.

PA OCA is also a member of PJM Interconnection LLC, which will be affected by the FES request. PA OCA opposes the FES Request for emergency action. If the Request is not denied outright, PA OCA requests that interested parties be given 60 days to file comments, as

requested by the Electric Power Supply Association and other organizations on Friday, March 30, 2018.

Respectfully submitted,



David T. Evrard  
Assistant Consumer Advocate  
Pennsylvania Office of Consumer Advocate

UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY

**MOTION OF PENNSYLVANIA OFFICE  
OF CONSUMER ADVOCATE  
TO INTERVENE**

The Pennsylvania Office of Consumer Advocate (PA OCA) hereby moves to intervene in the above-captioned proceeding pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214.

## I. PROCEDURAL BACKGROUND

On March 29, 2018, First Energy Solutions Corp. (FES) issued a letter (Request) to the Honorable James Richard Perry, Secretary of Energy, requesting that the Secretary use emergency authority under Section 202(c) of the Federal Power Act to find that an emergency condition exists in the PJM Interconnection, L.L.C. (PJM) territory requiring immediate intervention. Specifically, FES requests that the Secretary (a) order “certain existing nuclear and coal-fired generators . . . to enter into contracts” with PJM to generate and transmit energy, capacity, and ancillary services to “maintain the stability of the electric grid” and (b) order PJM to “promptly compensate at-risk merchant nuclear and coal-fired power plants for the full benefits they provide” to energy markets and the public. FES served the Request on over 100

owners of generation, transmission, or distribution assets, state public utility commissions, and others.

## **II. MOTION TO INTERVENE**

PA OCA is the state agency charged, under Pennsylvania law, with representing the interests of public utility consumers in matters before state and federal regulatory bodies. If FES' Request is granted, cost responsibility for payments made pursuant to the Emergency Order may be recovered from consumers in Pennsylvania and throughout the PJM region. PA OCA opposes the Request.

PA OCA moves for intervention under Rule 214 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure. Consistent with Rule 214(b)(2), PA OCA has a significant and direct interest in the outcome of this proceeding, and as the agency statutorily charged with representing the interests of public utility customers in Pennsylvania, PA OCA's participation is in the public interest.

## **III. SERVICE OF DOCUMENTS**

The person to receive service and communications on behalf of PA OCA with regard to this proceeding is:

David T. Evrard  
Assistant Consumer Advocate  
PA Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Email: [devrard@paoca.org](mailto:devrard@paoca.org)

## **IV. STATEMENT OF OPPOSITION**

Commission Rule 214(b)(1) requires the movant to state its position on the underlying matter. PA OCA opposes the relief sought by FES. Overwhelming evidence, not cited in the

Request, demonstrates that no need exists for the requested relief and certainly no emergency exists that would justify application of Section 202(c) of the Federal Power Act. PA OCA anticipates joining with other representatives of consumer interests in submitting a comprehensive rebuttal to FES' Request.

PA OCA joins with other intervenors in respectfully requesting the Department to give all interested parties sufficient time to present their responses to the FES Request before ruling on the Request. To that end, PA OCA supports the request filed Friday, March 30, 2018, by the Electric Power Supply Association and other organizations requesting a 60-day comment period.

## **V. CONCLUSION**

For the reasons set forth above, PA OCA respectfully requests that the Department grant PA OCA's motion to intervene in this proceeding and, if the Department does not reject the FES Request outright, provide all interested parties with 60 days to file comments on the Request.

Respectfully submitted,

*/s/ David T. Evrard*

David T. Evrard  
Assistant Consumer Advocate  
PA Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923  
Email: [devrard@paoca.org](mailto:devrard@paoca.org)

Dated: April 6, 2018

JOE MANCHIN III  
WEST VIRGINIA

SUITE 306  
HART BUILDING  
WASHINGTON, DC 20510  
(202) 224-3954

# United States Senate

WASHINGTON, DC 20510-4804  
April 6, 2018

COMMITTEES  
APPROPRIATIONS  
ENERGY AND NATURAL RESOURCES  
INTELLIGENCE  
VETERANS' AFFAIRS

Document 32

President Donald J. Trump  
The White House  
1600 Pennsylvania Ave, Northwest  
Washington, DC 20060

Dear President Trump,

On March 29, 2018, Secretary Perry and the Department of Energy received a request for an emergency order pursuant to his authority under Section 202(c) of the Federal Power Act. It is my understanding that this request by FirstEnergy Solutions is now under consideration. I greatly appreciate Secretary Perry's efforts to secure and strengthen our electric grid and, in particular, his consideration of this request.

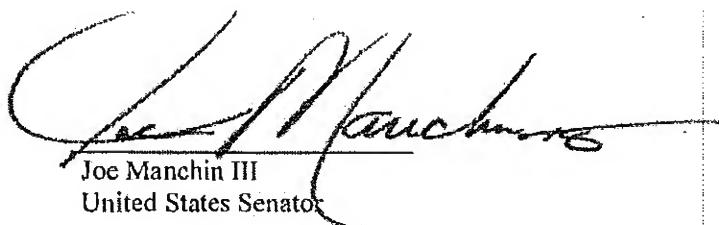
*As I have discussed with you and Secretary Perry on numerous occasions, many baseload units in the PJM Interconnection (PJM) footprint continue to suffer from the cumulative effect of an onslaught of overregulation, market rules that disadvantage baseload power, and subsidies and mandates that have encouraged negative bidding into competitive markets. In combination with the naturally occurring dynamics of our energy markets, essential baseload units that provide resilience and reliability attributes to our grid are struggling to stay operational. Many of these plants are located in the Ohio Valley region, including the Pleasants Power Station in Willow Island, West Virginia.*

As it has time and again, coal-fired power generation performed well during the Polar Vortex in 2014 and more recently during this year's Bomb Cyclone. These extreme weather events tested our electric grid in an unprecedented manner and coal delivered. In fact, the Department of Energy's own National Energy Technology Lab (NETL) found that, at the height of peak demand on January 5, 2018, "had coal been removed, a 9-18 GW shortfall would have developed."<sup>1</sup> NETL went on to conclude that, "In the case of PJM, it can also be shown that the demand could not have been met without coal."<sup>2</sup>

The impending deactivation of numerous coal and nuclear power plants is of great concern for our grid, for our communities, and for our nation. In addition to the loss of jobs and threats to the economic livelihood of the communities in which these plants sit, our region and our nation's electric grid will become less resilient if no action is taken now to keep these plants operational.

Therefore, I urge your Administration and the Department of Energy to use its statutory authority to preserve these critical units. I thank you for your consideration and am happy to make myself available to you at any time to discuss these matters.

Sincerely,



Joe Manchin III  
United States Senator

Cc: The Honorable Rick Perry

<sup>1</sup> National Energy Technology Lab, Department of Energy. "Reliability, Resilience, and the Oncoming Wave of Retiring Baseload Units, Volume I: The Critical Role of Thermal Units during Extreme Weather Events." Mar 13, 2018. Available at <https://www.netl.doe.gov/research/energy-analysis>. Last accessed April 6, 2018.

<sup>2</sup> *Id.*

**Johnsen, Steven (MA)**

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**From:** Ronald O'Connell (b) (6)  
**Sent:** Sunday, April 08, 2018 3:42 PM  
**To:** Secretary Perry; Ronald O'Connell  
**Subject:** Please don't let me down, from a swing voter

Rick

Please consider that (b) (6) and I heard you say that you were going to help drain the swamp. If you approve giving my tax dollars to First Energy for a bad decision they made to get involved with the Perry nuclear power plant, then you are proving to me that you are not in favor of free enterprise. I am the voter that looks at your actions, not your words. I agree with you that too many times phrase like "red meat to your" are used and I wish people would better focus on your actions. However if you give First Energy the bailout then you have failed me.

Ron O'Connell  
(b) (6)

719 APR 9 AM8:26

**From:** [Jereza, Catherine](#)  
**To:** [Bitner, Kathy \(CONTR\)](#)  
**Cc:** [Lotto, Adrienne](#); [Cunningham, Sean](#); [Konieczny, Katherine](#)  
**Subject:** FW: Motion to Intervene and Protest of the American Public Power Association Concerning Request of FirstEnergy Solutions Corp. for an Emergency Order under FPA Section 202(c)  
**Date:** Monday, April 09, 2018 6:30:42 PM  
**Attachments:** [image003.png](#)  
[APPA Motion to Intervene and Protest Re FES.pdf](#)

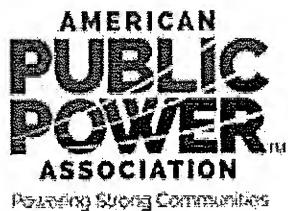
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**From:** John McCaffrey [mailto:[jmccaffrey@publicpower.org](mailto:jmccaffrey@publicpower.org)]  
**Sent:** Monday, April 09, 2018 5:21 PM  
**To:** Secretary Perry <[The.Secretary@hq.doe.gov](mailto:The.Secretary@hq.doe.gov)>; Walker, Bruce <[Bruce.Walker@hq.doe.gov](mailto:Bruce.Walker@hq.doe.gov)>; Jereza, Catherine <[Catherine.Jereza@Hq.Doe.Gov](mailto:Catherine.Jereza@Hq.Doe.Gov)>  
**Cc:** Delia Patterson <[dpatterson@publicpower.org](mailto:dpatterson@publicpower.org)>; Jillian Allen <[jallen@publicpower.org](mailto:jallen@publicpower.org)>; Elise Caplan <[ECaplan@publicpower.org](mailto:ECaplan@publicpower.org)>; Jack Cashin Jr <[jcashin@publicpower.org](mailto:jcashin@publicpower.org)>  
**Subject:** Motion to Intervene and Protest of the American Public Power Association Concerning Request of FirstEnergy Solutions Corp. for an Emergency Order under FPA Section 202(c)

Dear Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza:

Attached is the Motion to Intervene and Protest of the American Public Power Association in response to the March 29, 2018 request of FirstEnergy Solutions Corp., on behalf of certain of its subsidiaries, for an emergency order under section 202(c) of the Federal Power Act. If there are any questions or concerns regarding this filing, please contact me at the number or email address listed below.

John E. McCaffrey  
Regulatory Counsel  
[jmccaffrey@publicpower.org](mailto:jmccaffrey@publicpower.org)  
Office: 202.467.2952  
Mobile: (b) (6)





Powering Strong Communities

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202-467-2900  
[www.PublicPower.org](http://www.PublicPower.org)

April 9, 2018

**Via Electronic Mail**

The Honorable James Richard Perry  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585  
[the.secretary@hq.doe.gov](mailto:the.secretary@hq.doe.gov)

Mr. Bruce Walker  
Assistant Secretary, DOE Office of Elec. Delivery & Energy Reliability  
Office of Electric Reliability and Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585  
[bruce.walker@hq.doe.gov](mailto:bruce.walker@hq.doe.gov)

Ms. Catherine Jereza  
Deputy Assistant Secretary  
Office of Electricity Delivery and Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585  
[catherine.jereza@hq.doe.gov](mailto:catherine.jereza@hq.doe.gov)

**RE: Motion to Intervene and Protest of the American Public Power Association  
Regarding Request of FirstEnergy Solutions Corp. for an Emergency Order**

Dear Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza:

Enclosed is the Motion to Intervene and Protest of the American Public Power Association in response to the March 29, 2018 request of FirstEnergy Solutions Corp., on behalf of certain of its subsidiaries, for an emergency order under section 202(c) of the Federal Power Act.

If there are any questions or concerns regarding this filing, please contact me at the number listed above or by email at [jmccaffrey@publicpower.org](mailto:jmccaffrey@publicpower.org).

Respectfully submitted,

*/s/ John E. McCaffrey*

John E. McCaffrey  
Regulatory Counsel

UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY

Request for Emergency Order Pursuant )  
to Federal Power Act Section 202(c) by )  
FirstEnergy Solutions Corp. )  
DOE Docket No. \_\_\_\_\_

**MOTION TO INTERVENE AND PROTEST OF  
THE AMERICAN PUBLIC POWER ASSOCIATION**

Pursuant to Rules 212, 214, and 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC”),<sup>1</sup> the American Public Power Association (“APPA”) hereby moves to intervene in the above-captioned U.S. Department of Energy (“Department”) proceeding and protests the March 29, 2018 request (“Request”) of FirstEnergy Solutions Corp., on behalf of certain of its subsidiaries (collectively, “FirstEnergy”), that the Secretary of Energy (“Secretary”) issue an emergency order under section 202(c) of the Federal Power Act (“FPA”).<sup>2</sup>

APPA urges the Secretary to deny FirstEnergy’s unjustified request for an emergency order requiring PJM Interconnection, L.L.C. (“PJM”), and, by extension, the electricity consumers in the PJM region, to provide “full cost recovery” for certain merchant generating plants in PJM. FirstEnergy has neither demonstrated the existence of an emergency that would support action by the Secretary under FPA section 202(c), nor shown that its requested relief is reasonable.

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<sup>1</sup> 18 C.F.R. §§ 385.212, 385.214, and 385.211 (2017). The Department has pointed to FERC’s procedural rules where the Department’s regulations at 10 C.F.R. § 205.370, *et. seq.*, are silent. *See, e.g.*, DOE Answer to Procedural Questions Concerning Rehearing of DOE Order, *District of Columbia Public Service Commission*, Docket No. E0-05-01 (December 30, 2005) at 2.

<sup>2</sup> 16 U.S.C. § 824a(c).

## I. DESCRIPTION OF FIRSTENERGY'S REQUEST

FirstEnergy claims that an emergency condition exists in the PJM region due to recent and imminent retirements of nuclear and coal-fired generating units.<sup>3</sup> According to FirstEnergy, these plant retirements threaten generation diversity, reliability, resilience, and electric security in PJM.<sup>4</sup> To address this alleged emergency, FirstEnergy asks the Secretary to issue a section 202(c) emergency order: (1) directing certain existing nuclear and coal-fired generators in PJM to enter into contracts with PJM “to generate, deliver, interchange, and transmit electric energy, capacity, and ancillary services to maintain fuel diversity and grid dependability and resiliency within the PJM region;”<sup>5</sup> and (2) directing PJM to pay these merchant generating units “just and reasonable cost-based rates that provide for full cost recovery consistent with ratemaking standards and principles or as otherwise necessary to ensure continued operations.”<sup>6</sup> As proposed in the Request, relief would extend to *all* eligible plants in PJM, not just those owned and operated by FirstEnergy.<sup>7</sup>

FirstEnergy asks the Secretary to issue an emergency order immediately.<sup>8</sup> And “[i]f PJM and the owners are unable to agree to the contractual terms within fifteen (15) days of the issuance of the order,” FirstEnergy requests “that the Secretary step in and determine the just and

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<sup>3</sup> See Request at 16.

<sup>4</sup> See *id.* at 22.

<sup>5</sup> *Id.* at 31.

<sup>6</sup> *Id.* The Request (at 30) defines eligible plants as follows:

[N]uclear and coal-fired generators located within the PJM footprint that have a supply of fuel on-site sufficient to allow twenty-five (25) days of operation at full output, that are substantially compliant with all applicable federal, state, and local environmental laws and regulations, and that do not recover any of their capital or operating costs through rates regulated by a duly authorized state regulatory authority, municipal government, or energy cooperative.

<sup>7</sup> *Id.* at 27-28.

<sup>8</sup> *Id.* at 27.

reasonable compensation and conditions.”<sup>9</sup> FirstEnergy proposes that the emergency order remain in place for four years, “or until the Secretary determines that the emergency has ceased to exist because the PJM markets have been fixed to properly compensate these units for the resiliency and reliability benefits that they provide, whichever is later.”<sup>10</sup>

## **II. MOTION TO INTERVENE**

APPA is the national service organization representing the interests of not-for-profit, state, municipal and other locally owned electric utilities throughout the United States. More than 2,000 public power utilities provide over 15 percent of all kWh sales to ultimate customers and to businesses in every state except Hawaii. APPA utility members’ primary goal is providing customers in the communities they serve with reliable electric power and energy at the lowest reasonable cost, consistent with good environmental stewardship. This orientation aligns the interests of APPA-member electric utilities with the long-term interests of the residents and businesses in their communities. Collectively, public power systems serve over 49 million people.

APPA has utility members within the PJM region that may be directly affected by any action taken by the Secretary on FirstEnergy’s Request. Further, the Secretary’s actions in this matter could potentially have broader implications for the regulation of wholesale electricity markets in the United States, and APPA wishes to intervene to represent the interests of its members on such issues. For these reasons, the participation of APPA in this proceeding is consistent with the public interest, and APPA moves for leave to intervene as a party.

APPA respectfully requests that communications regarding this proceeding be directed to

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<sup>9</sup> *Id.* at 31-32.

<sup>10</sup> *Id.* 32.

the following individuals:

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### **III. PROTEST**

FirstEnergy has not demonstrated the existence of an emergency within the meaning of FPA section 202(c), and APPA urges the Secretary to deny the Request. The crux of FirstEnergy’s claim that an emergency exists is that retiring merchant coal and nuclear plants continue to be necessary for the reliable and resilient operation of the grid in the PJM region, which would otherwise be overly dependent on natural gas-fired plants and other forms of generation that lack fuel security.<sup>11</sup> FirstEnergy contends that FERC and PJM have not done enough to prevent coal and nuclear plant retirements,<sup>12</sup> arguing, in particular, that PJM markets do not adequately compensate the reliability and resiliency benefits of traditional baseload units with secure fuel supplies.<sup>13</sup> FirstEnergy’s general claims concerning the potential adverse impacts of coal and nuclear plant retirements in PJM do not establish the existence of an emergency within the meaning of section 202(c), let alone one that would justify imposing cost-of-service payments for merchant plants on consumers in PJM for at least a four-year period.

Section 202(c) provides a narrow and limited mechanism for the Secretary “to require temporary connections of facilities and such generation, delivery, interchange, or transmission of

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<sup>11</sup> See generally *id.* at 16-24.

<sup>12</sup> See *id.* at 8-12.

<sup>13</sup> See *id.*

electric energy” during emergencies.<sup>14</sup> Neither section 202(c) nor the Department’s implementing regulations contemplate broad, protracted intervention in wholesale energy markets, and the Secretary’s emergency authority simply cannot be invoked based on claims that plant retirement trends and over-reliance on a particular type of generation may pose reliability challenges some years in the future. The D.C. Circuit has specifically observed that FPA section 202(c) is not a means to secure one particular type of resource during periods of system surplus; rather, the provision “speaks of ‘temporary’ emergencies, epitomized by wartime disturbances, and is aimed at situations in which demand for electricity exceeds supply and not at those in which supply is adequate but a means of fueling its production is in disfavor.”<sup>15</sup> Consistent with this narrow interpretation of the statute, the Department’s regulations specify that “[a]ctions under [FPA section 202(c)] authority are envisioned as meeting a *specific inadequate power supply situation*.<sup>16</sup>

Moreover, FirstEnergy’s claimed “emergency” is, at bottom, based on economics; FirstEnergy contends that merchant coal-fired and nuclear plants in PJM are inadequately compensated for the reliability and resilience benefits they provide.<sup>17</sup> The Department’s regulations specifically state, however, that “[s]ituations where a shortage of electric energy is projected due solely to the failure of parties to agree to terms, conditions *or other economic factors relating to service*, generally will not be considered as emergencies unless the inability to

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<sup>14</sup> 16 U.S.C. § 824a(c).

<sup>15</sup> *Richmond Power & Light Co. v. FERC*, 574 F.2d 610, 615 (D.C. Cir. 1978) (footnote omitted).

<sup>16</sup> 10 C.F.R. § 205.371 (emphasis added).

<sup>17</sup> See, e.g., Request at 3 (arguing that “[t]he very diversity of supply that baseload nuclear and coal-fired units provide is being lost more and more each day as more and more of these plants retire because their fuel security and resiliency are not properly recognized and valued by the current administrative market rules.”); see also *id.* at 32 (indicating that the emergency would “cease[] to exist [once] the PJM markets have been fixed to properly compensate these units for the resiliency and reliability benefits that they provide”).

supply electric service is imminent.”<sup>18</sup> FirstEnergy’s Request cites plant retirements that may occur “in the next several years,”<sup>19</sup> which does not demonstrate an “imminent” inability to supply electric service in PJM that could possibly justify characterizing the situation in PJM as an “emergency” within the meaning of FPA section 202(c).<sup>20</sup>

While FirstEnergy claims that PJM is facing an “impending crisis,”<sup>21</sup> the evidence cited in the Request does not establish that retirement of coal and nuclear electric generation resources in the PJM region presents an immediate reliability threat justifying sweeping action under FPA section 202(c). In a March 30, 2018 letter to the Secretary responding to FirstEnergy’s Request, PJM “state[d] without reservation [that] there is no immediate threat to system reliability.”<sup>22</sup> PJM emphasized that plant retirements in the region are subject to review by PJM, which has “a range of tools available” to address any identified resource adequacy or reliability problems associated with plant retirements, including “offering full cost of service compensation . . . to induce assets to remain temporarily on-line.”<sup>23</sup>

Importantly, most of the same arguments FirstEnergy raises in its Request were considered by FERC in response to the Secretary’s proposed grid resiliency pricing rule,<sup>24</sup> and FERC found that requiring full cost recovery for fuel-secure merchant generating facilities was

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<sup>18</sup> 10 C.F.R. § 205.371 (emphasis added).

<sup>19</sup> Request at 20.

<sup>20</sup> In addition to the discussion above, APPA endorses the legal analysis of the PJM Consumer Representatives in this proceeding showing the narrow and limited scope of FPA section 202(c), and its inapplicability to the factual circumstances described by FirstEnergy. *See Protest of the PJM Consumer Representatives to the Emergency Order Request of FirstEnergy Solutions Corp.* at 4-13 (April 5, 2018).

<sup>21</sup> Request at 26.

<sup>22</sup> PJM Response at 1.

<sup>23</sup> *Id.*

<sup>24</sup> *Grid Resiliency Pricing Rule*, 82 Fed. Reg. 46,940 (Oct. 10, 2017).

not justified.<sup>25</sup> FERC’s January 8 Order on the Secretary’s proposed rule noted that FirstEnergy and other commenters “allege[d] grid resilience or reliability issues due to potential retirements of particular resources,”<sup>26</sup> but the Commission found “that these assertions do not demonstrate the unjustness or unreasonableness of the existing RTO/ISO tariffs.”<sup>27</sup> FERC prudently instituted proceedings to further analyze and address the issues raised by the Secretary’s proposed rule,<sup>28</sup> and those proceedings are ongoing, as FirstEnergy acknowledges.<sup>29</sup> FirstEnergy did not seek rehearing of FERC’s January 8 Order, and it is inappropriate for FirstEnergy to seek essentially the same relief from the Secretary that FERC, applying its exclusive jurisdiction over the rates, terms, and conditions of wholesale sales of electricity, found to be unjustified.<sup>30</sup>

Even if the Secretary were inclined to agree that the potential retirement of coal and nuclear plants in PJM is cause for concern, the relief requested by FirstEnergy is not reasonable. FirstEnergy asks the Secretary to require PJM and all eligible merchant generators to enter into full cost-of-service contracts (the cost of which would be passed on to consumers in the PJM region) without any showing that any particular resource is critical to reliability or resilience in

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<sup>25</sup> See *Grid Reliability and Resilience Pricing*, 162 FERC ¶ 61,012 at PP 14-15 (Jan. 8, 2018) (“January 8 Order”).

<sup>26</sup> *Id.* at P 15 (footnote omitted).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at PP 17-20.

<sup>29</sup> Request at 9-10. One piece of evidence cited by FirstEnergy that was not considered by FERC in its January 8 Order is the recent study by the Department’s National Energy Technology Laboratory (“NETL”) concerning the performance of coal and nuclear plants during the extreme cold weather in late 2017 and early 2018. See Request at 4. Evidence that coal and nuclear plants currently contribute to resource adequacy and reliability in the PJM region, however, does not establish that the potential retirement of some of these plants creates an emergency situation in PJM. Moreover, the PJM Consumer Representatives and other commenters in this proceeding have questioned the validity and significance of the NETL study’s conclusions. See PJM Consumer Representatives Protest at 25-28; March 30, 2018 Letter from Sierra Club at 12-15; March 20, 2018 Letter of Environmental Defense Fund and the Natural Resources Defense Council at 6-7.

<sup>30</sup> As the PJM Consumer Representatives note, the Department of Energy Organization Act provides that “[t]he decision of [FERC] involving any function within its jurisdiction . . . shall not be subject to further review by the Secretary or any officer or employee of the Department.” 42 U.S.C. § 7172(g).

PJM.<sup>31</sup> There is also a fundamental disconnect between the alleged problem identified by FirstEnergy and its proposed solution. As noted above, FirstEnergy’s “emergency” argument boils down to a claim that coal and nuclear plants in PJM receive inadequate revenues and will retire in large numbers. Yet eligibility for FirstEnergy’s proposed emergency relief does not require a showing that a plant is not currently recovering its costs, or that the plant would retire but for the opportunity to execute a long-term, cost-of-service contract with PJM. Further, the PJM Tariff already provides a process for PJM to review the reliability impacts of generator retirements, and PJM has tools to avoid adverse impacts, including offering cost-based compensation to incent plants to stay in service. FirstEnergy also never explains why four years would be an appropriate term for an emergency order to remain in effect. The costs to consumers in the PJM region could be enormous if the Secretary were to implement the requested emergency relief, and FirstEnergy has not shown that its proposed relief is reasonably tailored to addressing the issues that FirstEnergy identifies.<sup>32</sup>

APPA wishes to emphasize that it is not dismissing the broader concerns underlying FirstEnergy’s Request. APPA agrees that fuel supply diversity enhances system reliability and resilience, and there is no dispute that existing coal and nuclear plants currently make important contributions to resource adequacy in the PJM region. APPA also shares the concern that the organized markets operated by FERC-approved Regional Transmission Organizations (“RTOs”) and Independent System Operators (“ISOs”) have not proven to be well-suited to addressing fuel

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<sup>31</sup> See Request at 27-28. FirstEnergy never specifies the grounds on which it claims standing to ask for an emergency order applicable to merchant coal and nuclear plants that are not owned by FirstEnergy.

<sup>32</sup> APPA also notes that FirstEnergy’s request that the Secretary, rather than FERC, determine the just and reasonable compensation for sales from eligible plants if PJM and the plants’ owners are unable to agree is directly contrary to the Department’s regulations. See 10 C.F.R. 205.376 (2017) (providing that “[i]n the event that the DOE determines that an emergency exists under section 202(c), and the ‘entities’ are unable to agree on the rates to be charged, the DOE shall prescribe the conditions of service and refer the rate issues to [FERC] for determination by that agency in accordance with its standards and procedures.”).

diversity objectives. These are important and complex issues that regulators, policymakers, and industry stakeholders must address, and are currently seeking to address, in FERC's resilience proceeding, in individual RTO/ISO stakeholder processes, in North American Electric Reliability Corporation ("NERC") proceedings, and elsewhere. APPA strongly disputes the notion, however, that drastic intervention in the markets using the Secretary's FPA section 202(c) emergency authority is an appropriate solution to these concerns in the PJM region.

#### **IV. CONCLUSION**

APPA submits that its participation in this proceeding is in the public interest and respectfully asks that its motion to intervene be granted. Further, for the reasons set forth herein, the Secretary should deny FirstEnergy's request for an emergency order under section 202(c) of the FPA.

Respectfully submitted,

**AMERICAN PUBLIC POWER  
ASSOCIATION**

/s/ John E. McCaffrey

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Dated: April 9, 2018

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Arlington, Virginia, this 9th day of April, 2018.

*/s/ John E. McCaffrey*  
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April 9, 2018

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President

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Secretary Treasurer

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James P. Hoffa  
Teamsters

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James P. McCourt  
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Daniel E. Stepano  
Plasterers' and  
Cement Masons'

Mark McManus  
UA

Department of Energy  
Secretary Rick Perry  
Washington, DC 20009

Dear Secretary Perry,

On behalf of the 3 million skilled craft professionals that constitute the 14 affiliates of North America's Building Trades Unions (NABTU), I am writing in support of FirstEnergy Solutions' (FES) request to the U.S. Department of Energy to issue an emergency order to provide cost recovery to coal and nuclear plants in the PJM Interconnection market.

As you know, the FES request came last week when they also announced the retirement of three nuclear facilities over a three-year span. These plant closures place in jeopardy the livelihoods of the 2,300 workers employed by FES, directly impacting the economic and employment engines for the communities they serve.

The impact is compounded by the fact that thousands of NABTU men and women in Ohio and Western Pennsylvania perform millions of manhours at these facilities during scheduled outage work. During this time, 800-1,500 skilled craft workers are required to complete the work safely and on time.

The announcement of additional nuclear retirements is further proof we are at an inflection point in the debate over market reforms. Coal and nuclear are the most job-intensive sources of power generation. North America's Building Trades Unions supports First Energy Solutions request for DOE to use emergency powers and guarantee revenues to coal and nuclear plants in the PJM Interconnection region; maintaining the economic stability of our members and their communities.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean McGarvey".

Sean McGarvey

President

cc: Larry Kudlow

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Secretary Rick Perry  
U.S. Department of Energy  
10000 Independence Ave., SW  
Washington, DC 20585

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**Johnsen, Steven (MA)**

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**From:** Schwarzbaum, Paul <PSchwarzbaum@GTTechologies.com>  
**Sent:** Tuesday, April 10, 2018 3:05 PM  
**To:** Secretary Perry  
**Subject:** Impact of Baseload Power Retirements on National Security

Dear Secretary Perry,

I am the president and CEO of GT Technologies, Inc., a 113 year-old “Tier 1” supplier of engine valvetrain components to the automotive and heavy duty vehicle industries. My customers include such iconic American companies as Ford, GM, Cummins and Caterpillar, as well as leading international manufacturers with large American workforces, including Fiat Chrysler and Bosch.

If any of my three manufacturing plants in Defiance and Toledo, Ohio were to lose power for a sustained period of time, we could shut down multiple U.S. automotive plants and idle hundreds of thousands of American workers, to say nothing of adversely impacting the financial well-being of my own employees, their families, and the scores of businesses with their thousands of employees that depend on my company’s economic activity.

So it is with great concern that I have been following the saga of Ohio-based utility First Energy.

It is also with great appreciation that I have followed your personal efforts to prod the Federal Energy Regulatory Commission to issue sua sponte orders to the North American Electric Reliability Corporation to make the US bulk power system more reliable and resilient.

I appreciate your mindfulness that the DOE’s primary obligation is to national security and thus to assure that the U.S. economy is supported with reliable power. Your staff’s August 2017 report on the reliability and resilience of the electric grid is excellent. I applaud your initiative to direct your staff to create this report with its many sensible policy recommendations!

Market competition must always come second to national security. I say this as a manufacturing company CEO, a Harvard MBA – a person who clearly understands and values capitalism and competition.

Accordingly, I urge you to take whatever legal steps are in your power to assure that Ohio – the Midwest – the USA – will have reliable electrical power; and if that means bailing out First Energy and implicitly showing that PJM’s electricity market is a failed experiment, then so be it. (In fact, the Eastern Interconnection was not designed to support a long-distance “open” electricity market and it is dangerously overstressed.)

Until there is a way to reliably store sufficient quantities of natural gas on site at generating plants and to enable the “black-start” of all baseload power generation plants, only coal-fired plants, nuclear power plants, and hydroelectric dams will be able to address our national security needs for large amounts of resilient power.

More generally, I strongly encourage you to continue to press FERC to do its job; and for the DOE to take the lead in actively coordinating the development of a comprehensive set of policies and strategies with the Department of Homeland Security and U.S. Armed Forces to neutralize the threat to the U.S. bulk power system posed by disruptions to fuel supply and power distribution. Potential disruptions include winter weather (ice storms and frozen gas lines); cyber-terrorism (four US gas pipeline firms hit by coordinated cyber attacks in the past five days); and physical terrorism (recall the attack on PG&E’s Metcalf substation in 2013). With

electric utility CEOs predicting the retirement of a material portion of our country's baseload generation capacity over the next few years, and with ISO-New England forecasting rolling blackouts in their region by 2025, time is of the essence.

Thank you for championing the reliable and resilient generation and distribution of electricity to support America's national security.

Sincerely,

Paul Schwarzbaum  
President and CEO  
GT Technologies, Inc.

April 10, 2018

Honorable Rick Perry, Secretary  
Department of Energy  
1000 Independence Ave. SW  
Washington, DC 20585

Dear Secretary Perry,

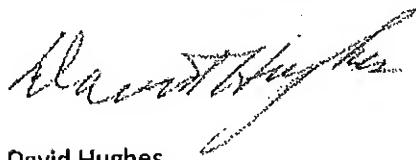
I am a FirstEnergy [PJM Interconnection] ratepayer. I am writing to ask that you reject FirstEnergy's subsidiary First Energy Solution's (FES) request under section 202(c) of the Federal Power Act for a declaration of emergency. There is no emergency. As PJM has made clear: "Nothing we have seen to date indicates that an emergency would result from the [FirstEnergy] generator retirements."

Granting FirstEnergy's request would be very disruptive to competitive markets and on that basis alone should be rejected.

FirstEnergy has a long track record of bad management decisions that have resulted in its ratepayers having to pay some of the highest electricity rates in the country. To grant this request would be another ratepayer bailout for bad management. Beginning in the 1970s with the decision to build 9 nuclear units, FirstEnergy management has made a series of bad decisions. The mismanagement of the construction of the Perry I and Beaver Valley II nuclear units resulted in \$9 billion in cost overruns. Most of these costs were passed on to ratepayers in the 1980s even though these units represented excess capacity in the FirstEnergy generation portfolio. Only high rates and billions of dollars in "stranded cost" recovery in the form of a "competitive transition charge" have likely kept First Energy Solutions from declaring bankruptcy a long time ago.

In addition, FirstEnergy has used a second phony argument for claiming it deserves a bailout. It claims it is not receiving sufficient compensation for the "unique benefits" that its nuclear units provide. FirstEnergy has been attempting to get the Ohio and Pennsylvania legislatures to give it a bailout in the form of "Zero Emissions Credits", another ratepayer charge. However, despite the myth that nuclear plants are a clean source of energy, the fact is they routinely vent some of the deadliest gases known to exist. And, the process to make commercial grade fuel for nuclear plants contributes to Climate Change.

Mr. Secretary, enough is enough. I urge you to do the right thing on behalf of the millions of ratepayers, not only in the FirstEnergy service territory, but throughout the PJM Interconnection: put an end to this history of gouging ratepayers to cover inept management.



David Hughes  
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David Hughes  
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Honorable Rick Perry, Secretary  
Department of Energy  
1000 Independence Ave, SW  
Washington, DC 20585

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COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
400 NORTH STREET, HARRISBURG, PA 17120

Document 38

April 10, 2018

**Via Overnight and Electronic Mail**

The Honorable Rick Perry  
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**Re: Motion to Intervene and Protest of Pennsylvania Public Utility  
Commission**

Dear Secretary Perry, Assistant Secretary Walker and Deputy Assistant Secretary Jereza:

The Pennsylvania Public Utility Commission (PAPUC), by and through its undersigned counsel, files this Motion to Intervene and Protest in the proceeding involving the March 29, 2018 Request for Emergency Order Pursuant to Federal Power Act Section 202(c) by FirstEnergy Solutions Corp. (FES).

## **I. PROCEDURAL BACKGROUND**

On March 29, 2018, FES sent a letter (Request) to U.S. Department of Energy (Department) Secretary James Richard Perry, formally requesting that Secretary Perry invoke his emergency authority under Federal Power Act (FPA) Section 202(c),<sup>1</sup> to find that an emergency condition exists in the PJM Interconnection (PJM) territory that requires immediate intervention. In the Request, FES seeks relief under Section 202(c), whereby the Secretary would order “certain existing nuclear and coal-fired generators” to contract with PJM for energy, capacity, and ancillary services to “maintain the stability of the electric grid.”<sup>2</sup> Further, FES requests that Secretary Perry order PJM to “promptly compensate at-risk merchant nuclear and coal-fired power plants for the full benefits they provide.”<sup>3</sup> FES served the Request on numerous affected parties.

## **II. MOTION TO INTERVENE**

The PAPUC is the agency charged with the responsibility for regulating electric utility rates and service within the Commonwealth of Pennsylvania, pursuant to the Public Utility Code.<sup>4</sup> In this role, the PAPUC has authority to represent the interests of Pennsylvania electric consumers in proceedings before federal courts, the Federal Energy Regulatory Commission (FERC) and other federal agencies including the Department.

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<sup>1</sup> 16 U.S.C.S. § 824a (c).

<sup>2</sup> FES Letter at 1.

<sup>3</sup> *Id.* at 1.

<sup>4</sup> 66 Pa. C.S. § 101 *et seq.*

Pennsylvania is centrally located within the Mid-Atlantic Region of the United States and possesses significant amounts of fossil fuel generation, as well as renewable generation. Pennsylvania is a major consumer of electricity with its industrial, commercial, and residential load and is one of the country's largest producers of natural gas, primarily from the Marcellus Shale formation. Growing development of this fuel source has made natural gas plentiful and economically attractive. This, in turn, has greatly accelerated a shift away from coal-fired generation toward gas-fired electric generation, along with construction of gas-fired electric generation, including combustion turbines.

The PAPUC has a vested interest in ensuring that adequate generation exists to meet the current and future needs of its residents and the region. In this regard, the PAPUC has been an active supporter of electric wholesale capacity markets and the initiatives advanced by the FERC and PJM, the regional transmission organization, to incentivize the continued development of new generation in the Mid-Atlantic region. Moreover, the PAPUC has a significant and direct interest in this proceeding that is not adequately represented by other parties.

If FES' Request is granted, prospective payments made pursuant to an Emergency Order would almost certainly be recovered from consumers throughout the PJM region, including millions of ratepayers in the Commonwealth of Pennsylvania. The PAPUC opposes the Request because, contrary to the assertions made therein, no foreseeable reliability risk exists. We reserve the right to supplement this preliminary pleading to

explain, in detail, what effect the Request would have on Pennsylvania's ratepayers and competitive market.

### **III. PROTEST**

The PAPUC protests FES' Request as legally and factually insufficient under Section 202 (c), and further, contends that the damage to electric wholesale markets and, by extension, retail customers far outweighs the speculative benefits advocated by FES.

In support of its Protest, the PAPUC avers as follows:

- The overwhelming evidence presented in letters filed by numerous parties to this proceeding demonstrates that no "emergency condition" exists to justify the extraordinary provisions of Section 202(c) of the FPA. Additionally, the allegations are altogether too remote to be actionable. FES' nuclear units are not scheduled for deactivation until May 31, 2020, for one unit, and May 31, 2021, for 3 other units at two plant sites. Wholesale market prices and market structures in future years may depart substantially from current market prices and structures. In the absence of credible evidence, FES' Request fails as legally and factually adequate to justify the relief it requests.
- FES' Emergency Order Request seeks unprecedented and overbroad relief. FES threatens the efficient functioning of organized competitive wholesale electricity markets by providing *de facto* cost of service treatment to coal and nuclear generation without adequate justification.
- Reliability is not at credible risk, as PJM's recent filings demonstrate. Moreover, if reliability concerns do arise, PJM has adequate processes for addressing those concerns.<sup>5</sup>
- Resilience and reliability are complex topics that are currently being examined within the PJM stakeholder process. These processes should be permitted to go forward, rather than coopting these

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<sup>5</sup> Reliability Must Run (RMR) protocol in PJM Manual 14D, pursuant to which PJM may request a unit to operate past its desired deactivation date.

processes through the Department's action vis a vis Section 202(c). PJM has an ongoing stakeholder process to address market design improvements, and is currently examining several energy, capacity, and ancillary market reforms, in addition to grid resiliency<sup>6</sup> issues. FES should not be permitted, through this Request, to circumvent the thorough stakeholder process currently established in PJM to elevate their self-serving interests over those of other competitive suppliers, technologies, utilities and end-use customers.

- If granted, the Request may unnecessarily raise energy costs for consumers and directly undercut the tremendous economic advantage to the United States from abundant natural gas deposits.
- FES, through its Request, is seeking to insert itself into matters of state jurisdiction as it relates to resource adequacy, resource selection criteria and state energy policy. These are matters established by the Governor and the Pennsylvania General Assembly,<sup>7</sup> as implemented through the PAPUC, and other departments within the Commonwealth of Pennsylvania.

The PAPUC respectfully urges the Department to give all interested parties sufficient time to present their responses to the FES Request before the Department rules on the Request. The PAPUC supports and concurs in the Trade Group request, filed March 30, 2018, seeking a 60-day comment period.

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<sup>6</sup> *Grid Resilience in Regional Transmission Organizations and Independent System Operators*, Docket No. AD18-7-000, Order issued January 8, 2018.

<sup>7</sup> 66 Pa.C.S. §§2801 *et seq.* and §§ 2201 *et seq.*

#### **IV. SERVICE OF DOCUMENTS**

The PAPUC designates the following persons to receive service and communications on its behalf in this proceeding:

James P. Melia  
James A. Mullins,  
Pennsylvania Public Utility Commission  
400 North Street, Harrisburg, PA 17120  
Tel: 717-787-1859; 717-787-5978  
[jamullins@pa.gov](mailto:jamullins@pa.gov)  
[jmelia@pa.gov](mailto:jmelia@pa.gov)

#### **V. CONCLUSION**

For the foregoing reasons, the PAPUC respectfully requests that the Department grant the PAPUC's Motion to Intervene, accept its Protest, provide all interested parties 60 days to file comments on the Request and reject FES' Request for relief under Section 202(c) of the FPA.

Respectfully submitted,

/s/ James A. Mullins  
James A. Mullins  
Assistant Counsel  
Attorney ID # 77066  
[jamullins@pa.gov](mailto:jamullins@pa.gov)

Pennsylvania Public Utility Commission  
P.O. Box 3265  
400 North Street  
Harrisburg, PA 17120  
Tel: 717-787-5978

Dated: April 10, 2018



**Margaret Comes**  
Associate Counsel  
Law Department

April 10, 2018

**VIA OVERNIGHT MAIL AND EMAIL**

The Honorable James Richard Perry  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585

Bruce Walker  
Assistant Secretary,  
U.S. Department of Energy  
Office of Electric Delivery and Energy Reliability  
1000 Independence Ave., S.W.  
Washington, DC 20585

Catherine Jereza  
Deputy Assistant Secretary  
U.S. Department of Energy  
Office of Electricity Delivery and Energy Reliability  
1000 Independence Ave., S.W.  
Washington, DC 20585

**RE: First Energy Solutions Corp. March 29, 2018 Request for Emergency Order  
Motion to Intervene of Rockland Electric Company**

Dear Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza:

Enclosed is Rockland Electric Company ("Rockland") Motion to Intervene in the above proceeding concerning First Energy Solutions Corp.'s March 29, 2018 ("FES") Request For Emergency Action ("Request"). Rockland is a public utility serving approximately seventy-two thousand retail electric customers in New Jersey who will be affected by the FES request.

Rockland Electric Company  
4 Irving Place – Room 1810-S New York NY 10003 212 460 3013 212 677 5850 fax [comesm@coned.com](mailto:comesm@coned.com)

Hon. Richard Perry

Page 2

Rockland also is a member of PJM Interconnection LLC which will be affected by the FES request. If the Request is not denied outright, Rockland requests that interested parties be given 60 days to file comments.

Respectfully submitted,

*Margaret Comes*  
Margaret Comes

enc.

c: William S. Scherman, Esq.  
Rick C. Giannantonio, Esq.

UNITED STATES OF AMERICA BEFORE THE  
DEPARTMENT OF ENERGY

The Request for Emergency Order of )  
First Energy Solutions Corp. dated )  
March 29, 2018 ) DOE Docket No. \_\_\_\_\_

**MOTION TO INTERVENE**

Rockland Electric Company ("Rockland") hereby moves to intervene in the above-captioned proceeding.

**I. PROCEDURAL BACKGROUND**

On March 29, 2018, First Energy Solutions Corp. (FES) issued a letter request to the Honorable James Richard Perry, Secretary of Energy, requesting that the Secretary use emergency authority under Section 202(c) of the Federal Power Act to find that an emergency condition exists in the PJM Interconnection, L.L.C. (PJM) territory requiring immediate intervention. Specifically, FES requested that the Secretary (a) order "certain existing nuclear and coal-fired generators ... to enter into contracts" with PJM to generate and transmit energy, capacity, and ancillary services to " maintain the stability of the electric grid" and (b) order PJM to "promptly compensate at-risk merchant nuclear and coal-fired power plants for the full benefits they provide" to energy markets and the public.

**II. MOTION TO INTERVENE**

Rockland is a public utility engaged in the transmission and distribution of electricity in New Jersey, and serves approximately 72,000 retail electric customers in New Jersey. Rockland Electric owns transmission facilities in PJM Interconnection, L.L.C. ("PJM") and is a member of PJM. Rockland and its customers will be directly affected by the outcome of these proceedings, and its interests cannot be represented adequately by any other party.

**III. NOTICES AND CORRESPONDENCE**

All communications, pleadings and orders with respect to this proceeding should be sent to the following individuals:

Brian Wilkie  
Energy Policy and Regulatory Affairs  
Rockland Electric Company  
4 Irving Place  
Room 17-430  
New York, New York 10003  
Telephone: (212) 460-4517  
Facsimile: (212) 228-4072  
e-mail: [wilkieb@coned.com](mailto:wilkieb@coned.com)

Margaret Comes  
Law Department  
Rockland Electric Company  
4 Irving Place  
Room 1815-S  
New York, New York 10003  
Telephone: (212) 460-3013  
Facsimile: (212) 677-5850  
e-mail: [comesm@coned.com](mailto:comesm@coned.com)

**IV. CONCLUSION**

Rockland Electric Company respectfully requests that the Department of Energy accept this motion permitting Rockland Electric Company to intervene in the above proceeding.

Dated: April 10, 2018  
New York, New York

Respectfully submitted,  
ROCKLAND ELECTRIC COMPANY

By: Margaret Comes  
Margaret Comes  
Associate Counsel  
Rockland Electric Company  
4 Irving Place  
Room 1815-S  
New York, New York 10003

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document on the William S. Scherman, Esq., Rick C. Giannantonio, Esq. and other parties to this proceeding.

Dated at New York, New York this April 10, 2018.

*Margaret Comes*

Margaret Comes

## UNITED STATES DEPARTMENT OF ENERGY

Request for Emergency Order )  
Pursuant to Federal Power Act ) DOE Docket/Order No.\_\_\_\_\_  
Section 202(c) by FirstEnergy )  
Solutions Corp. )  
\_\_\_\_\_  
)

## SIERRA CLUB'S MOTION TO INTERVENE

Sierra Club moves to intervene in any proceeding that the Department of Energy (the “Department”) may undertake with regard to the request by FirstEnergy Solutions Corp. (“FirstEnergy”) for an emergency order, pursuant to section 202(c) of the Federal Power Act, 16 U.S.C. 824a(c), made on March 29, 2018 (the “Request”). *See* 18 C.F.R. § 385.214(a)(3).<sup>1</sup>

## BACKGROUND

FirstEnergy has requested an order that would: (a) “direct … certain existing nuclear and coal-fired generators” within the region operated by PJM Interconnection, LLC (“PJM”) to “enter into contracts and all necessary arrangements with PJM … to generate, deliver, interchange and transmit electric energy, capacity and ancillary services”; and (b) require “PJM to pay” those generators “just and reasonable rates that provide for full recovery of [their] fully allocated costs and a fair return of equity.” Request 1, 31. Sierra Club filed a letter with the Department on March 30, 2018, urging the Department to deny that relief,

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<sup>1</sup> In the past, the Department has advised parties with an interest in orders issued under section 202(c) to follow the procedures set out in 18 C.F.R. Subpart 385, though those regulations do not, by their terms, apply to the Department’s actions under that section, 18 C.F.R. § 385.201.

or at a minimum, to open formal proceedings to solicit public comment on the Request. *See generally* Letter from Casey Roberts & Sanjay Narayan to Hon. Rick Perry & Catherine Jereza dated March 30, 2018 (attached).

#### STATEMENT OF OPPOSITION

Sierra Club opposes FirstEnergy's Request; the order sought by FirstEnergy is beyond the Department's authority under section 202(c), and is not reasonably supportable, or in the public interest. *See generally id.* (stating Sierra Club's position and basis in fact and law).<sup>2</sup>

#### BASIS FOR INTERVENTION

Sierra Club has a substantial interest that may be directly affected by the outcome of any proceeding responding to the Request. The requested order would require PJM to negotiate contracts with dozens of coal and nuclear-power generation units across PJM's territory, to provide those generation owners with recovery of all their costs, including a rate of return. These additional costs would be passed on to PJM's ratepayers. The relief that FirstEnergy seeks for all merchant units in PJM is extremely similar to that called for in the Grid Resiliency Pricing Rule, unanimously rejected by the Federal Energy Regulatory Commission

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<sup>2</sup> Sierra Club reserves the right to amend or alter its position, depending on the action, if any, taken by the Department in response to the Request, and the actions of other affected parties. *See* 18 C.F.R. § 385.214(b)(1) (applicant to intervene must only state position "to the extent known.")

last fall.<sup>3</sup> That rule was projected to have costs of up to \$8.1 billion annually for PJM ratepayers.<sup>4</sup>

As of late 2016, Sierra Club had over 112,000 members who reside in the service territory of PJM and pay electricity bills to load-serving entities that buy power from PJM. These members would see higher electricity bills as a result of FirstEnergy's requested order. These financial harms to our members are germane to Sierra Club's mission, which includes addressing the quality of the human environment by promoting an affordable transition to clean energy. Sierra Club also has offices in PJM territory and is itself a ratepayer affected by any cost increases put in place as a result of an order responsive to FirstEnergy's request.

In addition, Sierra Club members are affected by the pollution that will be produced by continued operations of coal-fired power plants that would otherwise retire in the near future. As described in our previous letter, most of the retirements vaguely alluded to by FirstEnergy are several years away. However, several units have already been cleared for retirement, such as FirstEnergy's Pleasants Power Station, which PJM has determined can close on January 1, 2019 without any adverse impacts on reliability.<sup>5</sup> Sierra Club has members who live near to the

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<sup>3</sup> DOE, Notice of Proposed Rulemaking: Grid Resiliency Pricing Rule, available at <https://www.energy.gov/sites/prod/files/2017/09/f37/Notice%20of%20Proposed%20Rulemaking%20.pdf>.

<sup>4</sup> See Robbie Orvis et al., The Department of Energy's Grid Resilience Pricing Proposal: A Cost Analysis (Oct. 2017), available at [http://energyinnovation.org/wp-content/uploads/2017/12/20171025\\_Resilience-NOPR-Cost-Research-Note-UPDATED.pdf](http://energyinnovation.org/wp-content/uploads/2017/12/20171025_Resilience-NOPR-Cost-Research-Note-UPDATED.pdf) (Table 2: Annual Increase in Customer Costs by Region, Reading 4, Total).

<sup>5</sup> Robert Walton, PJM greenlights FirstEnergy to deactivate coal plant units at Pleasants Power Station, UtilityDive (Mar. 22, 2018), at <https://www.utilitydive.com/news/pjm-greenlights-firstenergy-to-deactivate-coal-plant-units-at-pleasants-pow/519791/>.

Pleasants Power Station, and are therefore negatively affected by air pollution from the coal-burning plant. This ongoing harm to Sierra Club's members would otherwise cease upon the plant's deactivation, but would persist if the plant received additional compensation as envisioned in the Request.

The Sierra Club has a demonstrated organizational commitment to the above-described interests. The Sierra Club's Beyond Coal Campaign seeks to reduce the pollution currently being produced by coal-fired power plants such as those that FirstEnergy seeks to support. To that end, Sierra Club has participated in regulatory proceedings relating to nearly all of the units listed in Attachment A to FirstEnergy's request, seeking to mitigate their pollution, minimize costs that ratepayers must bear to support these plants, or both.

For all of those reasons, Sierra Club has an interest that may be directly affected by the outcome of any proceeding in response to FirstEnergy's Request, and Sierra Club's participation is in the public interest.

#### SERVICE AND COMMUNICATIONS

Service upon Sierra Club may be made, and communications to Sierra Club may be addressed, to:

Sanjay Narayan  
Sierra Club Environmental Law  
Program  
2101 Webster St., Ste. 1300  
Oakland CA 94104  
[sanjay.narayan@sierraclub.org](mailto:sanjay.narayan@sierraclub.org)  
(415) 977-5769

Casey Roberts  
Sierra Club Environmental Law  
Program  
1536 Wynkoop St., Ste. 200  
Denver CO 80202  
[casey.roberts@sierraclub.org](mailto:casey.roberts@sierraclub.org)  
(303) 454-3355

## CONCLUSION

For these reasons, Sierra Club respectfully requests that the Department allow Sierra Club to intervene in any proceedings conducted in response to FirstEnergy's Request.

/s/ Casey Roberts

Casey Roberts  
Sierra Club Environmental Law Program  
1536 Wynkoop St., Suite 200  
Denver, CO 80202  
(303) 454-3355  
[casey.roberts@sierraclub.org](mailto:casey.roberts@sierraclub.org)

Sanjay Narayan  
Sierra Club Environmental Law Program  
2101 Webster St., Ste. 1300  
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(415) 977-5769  
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Bridget Lee  
Sierra Club Environmental Law Program  
50 F. St., NW, 8th Floor  
Washington, D.C. 20001  
(b) (6)  
[bridget.lee@sierraclub.org](mailto:bridget.lee@sierraclub.org)



March 30, 2018

Via Electronic Mail and U.S. Mail

Hon. Rick Perry  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington D.C. 20585  
The.Secretary@hq.doe.gov

Catherine Jereza  
Deputy Assistant Secretary  
Office of Electricity Delivery and Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington D.C. 20585  
Catherine.Jereza@hq.doe.gov

Dear Mr. Perry and Ms. Jereza:

FirstEnergy Solutions Corp. (“FirstEnergy” or “FES”) has submitted a request for an emergency order, pursuant to, *inter alia*, section 202(c) of the Federal Power Act. As envisioned by FirstEnergy, such order would result in utility customers paying above-market cost-of-service rates (including a guaranteed profit) for at least four years to the owners of all merchant coal and nuclear generating units in PJM that have at least 25 days’ worth of onsite fuel. According to FirstEnergy, such payments are necessary to prop up those merchant coal and nuclear plants in order to ensure “resiliency” in the PJM system and avoid an “emergency” triggering the extraordinary powers of section 202(c). In reality, however, FirstEnergy has not shown that resiliency is at risk, or that the aging coal and nuclear units that may be retiring over the next seven years are needed to ensure such resiliency. Nor has FirstEnergy proposed a remedy that could be legally authorized under the Federal Power Act.

FirstEnergy’s request here is nothing more than a slightly scaled down version of the Grid Resiliency Pricing proposal that the Federal Energy Regulatory

Commission (“FERC”) unanimously rejected less than three months ago. FirstEnergy has not and could not provide any basis for a different result to be reached here. As such, the Department can reject FirstEnergy’s legally flawed and factually unsupported request out of hand.

If the Department does not reject FirstEnergy’s request as not approvable on its face, we urge you to open up a formal docket, or undertake some other public proceedings to solicit public comments, so that the Department can reach a considered decision in this matter.<sup>1</sup> As set forth below, FirstEnergy’s application raises substantial legal and policy issues, will impose staggering costs on PJM ratepayers, and undermine competition and investor certainty in the PJM marketplace.

## **I. Procedure and Standing**

In this letter, Sierra Club sets out its initial comments in response to FirstEnergy’s request. Should the Department not reject FirstEnergy’s request outright, we expect that it will open a docketed proceeding to address the request, as it did in response to the request from PJM Interconnection last year regarding the Yorktown units.<sup>2</sup> Sierra Club intends to fully participate in that proceeding through the submission of evidence and legal argument, and to seek rehearing should the Department issue an order outside the scope of its authority.

Sierra Club feels compelled to offer these initial comments only the day after FirstEnergy’s request was filed because, as FirstEnergy directly acknowledges in the request, it “likely will file for bankruptcy by the end of March 2018.”<sup>3</sup> A bankruptcy filing may affect the rights of entities such as the Sierra Club to fully protect their interests in this matter.

Sierra Club has a substantial interest in this matter and would be adversely affected in numerous ways by an order along the lines of what FES proposes. FES’ proposed order would require PJM to negotiate contracts with dozens of coal and nuclear-power generation units across PJM’s territory, to provide those generation owners with recovery of all their costs, including a rate of return. These additional

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<sup>1</sup> The Department has taken the position that its orders, under section 202(c), are “proceedings” within the meaning of section 313 of the Federal Power Act, 16 U.S.C. § 825l. That interpretation of the Act emphasizes the appropriateness of engaging in the procedural steps by which the Department conducts its other proceedings—most importantly, notice and an opportunity for interested parties to comment.

<sup>2</sup> DOE, Federal Power Act Section 202(c) – PJM Interconnection & Dominion Energy Virginia, 2017, at <https://www.energy.gov/oe/downloads/federal-power-act-section-202c-pjm-interconnection-dominion-energy-virginia-2017-0>.

<sup>3</sup> FirstEnergy’s March 29, 2018 request to the Department at 8, 20.

costs would be passed on to PJM's ratepayers. The relief that FES seeks for all merchant units in PJM is extremely similar to that called for in the Grid Resiliency Pricing Rule last fall.<sup>4</sup> That rule was projected to have costs of up to \$8.1 billion annually for PJM ratepayers.<sup>5</sup>

As of late 2016, Sierra Club had over 112,000 members who reside in the service territory of PJM and pay electricity bills to load-serving entities that buy power from PJM. These members would see higher electricity bills as a result of FirstEnergy's requested order. These financial harms to our members are germane to Sierra Club's mission, which includes addressing the quality of the human environment by promoting an affordable transition to clean energy. Sierra Club also has offices in PJM territory and is itself a ratepayer affected by any cost increases put in place as a result of an order responsive to FES' request.

In addition, Sierra Club members are affected by the pollution that will be produced by continued operations of coal-fired power plants that would otherwise retire in the near future. As described below, most of the retirements vaguely alluded to by FES are several years away. However, several units have already been cleared for retirement, such as FirstEnergy's Pleasants Power Station, which PJM has determined can close on January 1, 2019 without any adverse impacts on reliability.<sup>6</sup> Sierra Club has members who are negatively affected by air and water pollution from Pleasants that would otherwise cease upon its deactivation, but would persist if the plant received additional compensation as envisioned in FES' request.

The Sierra Club has a demonstrated organizational commitment to the above-described interests. The Sierra Club's Beyond Coal Campaign seeks to reduce the pollution currently being produced by coal-fired power plants such as those that FES seeks to support. To that end, Sierra Club has participated in regulatory proceedings relating to all of the units listed in Attachment A to FES' request,

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<sup>4</sup> DOE, Notice of Proposed Rulemaking: Grid Resiliency Pricing Rule, available at <https://www.energy.gov/sites/prod/files/2017/09/f37/Notice%20of%20Proposed%20Rulemaking%20.pdf>.

<sup>5</sup> See Robbie Orvis et al., The Department of Energy's Grid Resilience Pricing Proposal: A Cost Analysis (Oct. 2017), available at [http://energyinnovation.org/wp-content/uploads/2017/12/20171025\\_Resilience-NOPR-Cost-Research-Note-UPDATED.pdf](http://energyinnovation.org/wp-content/uploads/2017/12/20171025_Resilience-NOPR-Cost-Research-Note-UPDATED.pdf) (Table 2: Annual Increase in Customer Costs by Region, Reading 4, Total).

<sup>6</sup> Robert Walton, PJM greenlights FirstEnergy to deactivate coal plant units at Pleasants Power Station, UtilityDive (Mar. 22, 2018), at <https://www.utilitydive.com/news/pjm-greenlights-firstenergy-to-deactivate-coal-plant-units-at-pleasants-pow/519791/>.

seeking to mitigate their pollution, minimize costs that ratepayers must bear to support these plants, or both.

## **II. FirstEnergy’s Application Does Not Describe Any Emergency Within the Meaning of Section 202(c) of the Federal Power Act.**

### *1. Section 202(c) Confines Emergencies to Specific, Imminent Events.*

Section 202(c) of the Federal Power Act provides the Department with authority over “the generation of electric energy” only “[d]uring the continuance of any war in which the United States is engaged,” or if “the [Department] determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes.” 16 U.S.C. § 824a(c)(1). The statute’s use of the present text—that an emergency “exists”—demands, at a minimum, that an emergency be present, certain, and immediate, rather than distant and contingent.

That certainty and immediacy is inherent in the statute’s fundamental requirement—an “emergency.” The Act does not define “emergency”; according to the dictionary, the word primarily demands “an unforeseen combination of circumstances or the resulting state that calls for *immediate* action.” Merriam Webster’s Dictionary 407 (11<sup>th</sup> ed. 2009) (emphasis added). An emergency, by definition, is not an anticipated event occurring, perhaps, years in the future; it describes an imminent, unavoidable threat.

The surrounding context emphasizes the exigency of the circumstances described by section 202(c)’s reference to an “emergency”: the authority granted by section 202(c) is, primarily, a war-time power. 16 U.S.C. § 824a(c) (authorizing orders during “continuance of any war in which the United States is engaged”). *See Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961) (noting that statutory terms should be interpreted in context of nearby parallel terms “in order to avoid the giving of unintended breadth to the Acts of Congress”). An “emergency” under the statute is limited to circumstances that are similarly urgent: “a *sudden* increase in the demand for electric energy,” for example. 16 U.S.C. § 824a(c) (emphasis added). *See Richmond Power and Light v. Federal Energy Reg’y Comm.*, 574 F.2d 610, 615 (D.C. Cir. 1978) (holding that section 202(c) “speaks of ‘temporary’ emergencies, epitomized by wartime disturbances” and that statute is reasonably understood to exclude circumstances such as “dependence on imported oil”).

Section 202(c) is, moreover, expressly meant to address short-term, “temporary” conditions—it provides no authority to implement long-term policy preferences, in response to potential difficulties that may emerge years from now. *Id.* Congress underlined the limited scope of section 202(c) when enacting the provision. “This is

a temporary power designed to avoid a repetition of the conditions during the last war, when a serious power shortage arose. Drought and other natural emergencies have created similar crises in certain sections of the country; such conditions should find a federal agency ready to do all that can be done in order to prevent a breakdown in electric supply.” S. Rep. No. 74-621 at 49 (1935).<sup>7</sup>

The Department’s regulations confirm those limitations. They define an “emergency” as “an *unexpected* inadequate supply of electric energy” resulting from “the unexpected outage or breakdown of facilities,” which may result from “weather conditions, acts of God, or unforeseen occurrences not reasonably within the power of the affected ‘entity’ to prevent.” 10 C.F.R. § 205.370 (emphases added). Anticipated customer demand can be an emergency, only upon “a *sudden increase* in such demand emphasis). Those examples reflect the limited nature of the emergencies encompassed by section 202(c): unusual, unforeseen, and unexpected events, with immediate and substantial consequences.

## 2. *The Structure of the Act Further Confirms That the Authority Conferred by Section 202(b) Is Limited to Unusual, Unexpected Circumstances.*

Other portions of the statute, outside section 202(c) itself, reinforce that section’s tightly limited scope. Section 202(b) confirms the constrained nature of the Department’s emergency powers under section 202(c). That section provides cabined authority (exercised by the Federal Energy Regulatory Commission, rather than the Department) to “direct a public utility … to establish physical connection[,] … sell energy, or exchange energy” with other persons, under normal, non-emergency conditions. 16 U.S.C. § 824a(b). The statute establishes specific standards and procedural requirements for such non-emergency orders. *Id.* Section 202(c) removes many of those requirements—but does so only during war-time or similarly extreme circumstances. 16 U.S.C. § 824a(c). *See Otter Tail Power Co. v. Fed. Power Comm.*, 429 F.2d 232, 233-34 (1970) (holding that section 202(c) “enables the Commission to react to a war or national disaster,” while section 202(b) “applies to a crisis which is likely to develop in the foreseeable future”). That structure establishes a clear divide between quotidian energy-system management (even where necessary to avert a future crisis), governed by section 202(b), and unusual, unforeseeable ‘emergencies,’ governed by section 202(c). Read within that structure, section 202(c) cannot apply to routine planning matters; such application would render section 202(b) unnecessary, and eviscerate its procedural and substantive requirements.

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<sup>7</sup> While Congress amended section 202(c) in 2015, it did not alter the Department’s basic grant of emergency authority; it only addressed occasions on which a Department order might produce a conflict with other laws. *See* H.R. Rep. No. 114-357 (2015).

Section 215 of the Federal Power Act, added in 2005, suggests additional boundaries on the Department’s powers under section 202(c). Section 215 provides a detailed enforcement mechanism, with specified procedures, remedies, and timeframes, for federal reliability standards. *See generally* 16 U.S.C. § 825o. As the D.C. Circuit has recognized, the portion of the Federal Power Act that predates that section—which includes section 202(c)—did not provide the federal government with the power to enforce requirements designed to ensure broad, long-term reliability requirements. *Alcoa, Inc. v. FERC*, 564 F.3d 1342, 1344 (D.C. Cir. 2009) (noting that prior to the Energy Policy Act of 2005, “the reliability of the nation’s bulk-power system depended on participants’ voluntary compliance with industry standards”). Consequently, a bare violation of a federal reliability standard cannot suffice to provide the Department with “emergency” power to enforce that standard under section 202(c). Reading section 202(c) to permit direct enforcement of reliability requirements through emergency orders would bypass the limits and procedures that Congress enacted in section 215 to constrain such enforcement. *See California Independent System Operator Corp. v. FERC*, 372 F.3d 395, 401-2 (D.C. Cir. 2004) (“Congress’s specific and limited enumeration of [agency] power over [particular matter] in [one section of Federal Power Act] is strong evidence that [separate section] confers no such authority on [agency].”). Similarly, the Federal Power Act contains separate and independent provisions to address wholesale rates, and any perceived insufficiency of such compensation. 16 U.S.C. § 824d & 824e. Those provisions likewise indicate that any perceived inadequacy in the wholesale markets cannot be an emergency sufficient to provide the Department with authority under section 202(c).

3. *The Application Does Not Contain Information Sufficient to Support Any Finding that an Emergency Exists under Section 202(c).*

a. The Long-Term Resource-Allocation Concerns Described by FirstEnergy Are Not an “Emergency”.

FirstEnergy’s request describes no imminent, specific threat that could plausibly qualify as an “emergency” under the statute. The request asserts a need for “fuel diversity,” and other parties’ failure to pay FirstEnergy (and other merchant coal and nuclear generators) the “compensation” to which FirstEnergy believes itself to be entitled. Request 3. It cites no imminent shortfall in supply; it states only that certain units have dispatched in the past, and suggests that such units may be replaced by other sources of supply over the next seven years. *Id.* at 8-9. The Department has never exercised section 202(c) under similar circumstances; in every case, it has carefully established an imminent, unavoidable, and specific

short-fall in electricity supply, and issued narrowly tailored orders intended to address that specific shortfall.<sup>8</sup>

Even if those suggestions were adequately supported (and they are not, see Part III, below), they would not suffice to demonstrate an emergency under section 202(c). The Department has made clear that its authority, under section 202(c), may only be exercised to address “a *specific* inadequate power supply situation.” 10 C.F.R. § 205.371 (emphasis added). FirstEnergy’s application alleges no such specific situation; indeed, it acknowledges as much, in its failure to meaningfully address the application requirements specified in the Department’s regulations. Request 30-31. As the D.C. Circuit has noted, such “long-term” policy concerns, associated with “broad questions of resource allocation,” are not the proper subject of an emergency order under section 202(c). *Richmond Power & Light*, 574 F.3d at 615-16 (citation omitted).

b. The Entity Authorized to Address FirstEnergy’s Concerns Has Already Established That There Is No Need for Emergency, Near-Term Action.

The Federal Power Act (and other statutes) give the Federal Energy Regulatory Commission (and the National Electric Reliability Council) primary authority over the questions that FirstEnergy asks this Department to resolve by emergency order. *E.g.*, Request 7-8 & 27 (asserting that “wholesale pricing” is not providing “full[] compensation” to FirstEnergy and threat to long-term “reliability”), and 16 (claiming non-specific “reliability” concerns). See 16 U.S.C. §§ 824d & 824o. As noted above, that the Federal Power Act includes separate, closely cabined provisions addressing such matters strongly suggests that FirstEnergy’s stated concerns are not appropriately addressed through section 202(c). Rather, they are matters for FERC, and for NERC.

And FERC has already squarely addressed, and rejected, the primary rationale provided by FirstEnergy for an order. As FirstEnergy acknowledges, FERC very recently rejected a proposal by the Department to require certain grid operators, including PJM, to provide cost-based compensation to merchant coal and nuclear generators. See FERC, Grid Reliability and Resilience Pricing, Order Terminating Rulemaking Proceeding, Initiating New Proceeding, and Establishing Additional Procedures, 162 FERC ¶ 61,012 (Jan. 8, 2018). FERC found that existing tariffs

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<sup>8</sup> FirstEnergy cites the Department’s recent orders regarding the Yorktown power plant. Request 19. But as the Department made clear in response to Sierra Club’s requests for rehearing, those Orders were only issued after the Department found that the orders were the sole means of avoiding “immediate interrupt[ions of] service” to a substantial portion of Virginia, and were narrowly tailored to avoid those defined, established interruptions. Summary of Findings for Department of Energy Order No 202-17-4 at 6-7.

were not unjust and unreasonable, based on the evidence that no “past or planned generator retirements . . . [are] a threat to grid resilience. *Id.* at 15. FirstEnergy presents essentially the same evidence of a threat to resiliency that the Commission rejected just a few months ago. FirstEnergy did not even seek rehearing of the Commission’s January 8 order, but instead seeks to relitigate the issue in a forum it views as more favorable. The Department should not accept FirstEnergy’s invitation to reconsider an issue decided not even three months ago by a unanimous FERC.

Although FERC decided there was no urgent threat to the grid’s reliability to justify the extraordinary action proposed by the Department, it did initiate a docket to promptly and more comprehensively address whether addition steps are needed to ensure resilience. Jan. 8 Order at 17-20. While FirstEnergy asserts that FERC’s ongoing docket to examine the problem that FirstEnergy complains of is “too little, too late,” Request at 10, FERC’s ongoing proceeding is precisely the forum to address the kinds of longer-term issues that FirstEnergy alleges, such as a substantial portion of the generation fleet retiring over a number of years. Likewise, the energy and capacity market reforms that PJM is currently considering, and will shortly present to FERC, are the proper forum to address any shortcomings in market design.

*4. The Relief Requested by the Application Is Not “Just and Reasonable” Compensation Within the Meaning of Section 202(c).*

FirstEnergy asks the Department to require that it and other merchant coal and gas generators receive compensation for “operating expenses, costs of capital and debt, and a fair return on equity and investment,” and specifically prescribe “full cost recovery consistent with ratemaking standards and principles or (b) full recovery of all costs necessary to ensure continued operations.” Request 31-32. FirstEnergy asks that contracts setting out this cost recovery be negotiated with 15 days, a virtual impossibility given the enormous number of units for which FirstEnergy seeks compensation and the likelihood that none of these units, which have operated in competitive markets for years, are prepared to present cost-of-service data to PJM. Moreover, FirstEnergy asks the Department, “if PJM and the owners are unable to agree to the contractual terms” within 15 days, to itself “determine just and reasonable rates.” *Id.*

As an initial matter, the Department’s regulations specify that, should the affected parties be unable to reach an agreement as to rates, the Department “shall . . . refer the rate issues to the Federal Energy Regulatory Commission.” 10 C.F.R. § 205.376. The Department cannot, therefore, grant FirstEnergy’s request that it directly set “just and reasonable rates,” Request at 32. The determination of just and reasonable wholesale rates is a matter indisputably within FERC’s jurisdiction, not that of the Department.

More importantly, the Federal Power Act allows the Department only to implement “just and reasonable” terms. 16 U.S.C. § 824a(c)(1). And the “full recovery” of costs and a fair return on equity that FirstEnergy requests is (Request 31)—as FERC itself has suggested—not demonstrably just or reasonable. In its January 8, 2018 order in RM18-1-000, the Commission held that the proposed remedy to “allow all eligible resources to receive a cost-of-service rate regardless of need or cost to the system” had not been shown to be just and reasonable nor to avoid undue discrimination. *Id.* at 16. FirstEnergy’s proposed compensation here suffers from many of the same flaws in the proposal that FERC rejected, including but not limited to, the lack of any explanation of whether such compensation should be net of market revenues, lack of assurance that a unit is actually needed to serve load, and lack of cost controls imposed by the scrutiny of proper cost-based ratemaking.

### **III. PJM is reliable and will remain so for the foreseeable future.**

As with the Proposed Grid Resiliency Rule, FirstEnergy’s request relies on unfounded claims that planned retirements of existing generating units threaten the “resiliency” of the PJM system. As Sierra Club and other Public Interest Organizations explained in their initial and reply comments on the Proposed Rule, and as FERC found in rejecting the Proposed Rule, there is no evidence that such generating unit retirements threaten the reliability or resiliency of the system.<sup>9</sup> Instead, as PJM recently explained in response to questions from the U.S. Senate

PJM does not believe that operating outside of the market to preserve a particular class or type of generation is needed at this time for reliability. The markets have been resilient in attracting new investment. In addition, a variety of tools exist as a backstop should specific generation be needed in a particular area.<sup>10</sup>

Nothing in FirstEnergy’s request supports a different conclusion here.

Given that FirstEnergy’s thin support for its request closely resembles that presented to initiate FERC’s consideration of the Grid Resiliency Pricing Rule, Sierra Club refers the Department to the extensive record created in that case, in particular, the comments of Public Interest Organizations, cited above, and those of PJM Interconnection, which provide a detailed rebuttal of the arguments presented

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<sup>9</sup> January 8, 2018 FERC Order in Docket Nos. RM18-1-100 and AD18-7-000.

<sup>10</sup> U.S. Sen. Comm. on Energy and Nat. Res., *The Performance of the Electric Power System in the Northeast and Mid-Atlantic During the Recent Winter Weather Events, Including the Bomb Cyclone*, Questions for the Record Submitted to Mr. Andrew Ott, Response to Question 1 from Sen. Lisa Murkowski (Jan. 23, 2018).

by FirstEnergy in its Request.<sup>11</sup> We write here to briefly address two of the more egregious arguments posited in FirstEnergy’s request—FirstEnergy’s claims that the 2014 Polar Vortex and the recent Bomb Cyclone somehow demonstrate the resiliency value of the aging coal and nuclear units in PJM.

*1. The Polar Vortex does not justify FirstEnergy’s request for DOE to prop up uneconomic coal and nuclear units in PJM.*

FirstEnergy’s continued misrepresentation of the events of the 2014 Polar Vortex is especially galling. Request 5, 9, 17. Indeed, while FirstEnergy claims that the Polar Vortex established the necessity of its coal and nuclear units, the Polar Vortex actually showed that on-site fuel storage does not ensure enhanced resiliency.

Of the 35,000 MW of generation capacity that failed to respond, nationwide, during the Polar Vortex, 26 percent was coal and 5 percent was nuclear. DOE Staff Report at 98. And while a significant amount of natural gas capacity also experienced outages, the majority of those outages related to frozen equipment, *not* fuel supply issues.<sup>12</sup> Within PJM, only a quarter of the record high 22% forced outage rate on January 7, 2014, was the result of fuel supply issues.<sup>13</sup> Far more significant were other causes such as faulty plant maintenance and weather-related damage.<sup>14</sup> PJM’s subsequent analysis of the Polar Vortex also highlighted that two resources not reliant on fuel—wind energy and demand—overperformed during that time period.<sup>15</sup>

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<sup>11</sup> Initial Comments of PJM Interconnection, L.L.C. on the United States Department of Energy Proposed Rule.

<sup>12</sup> NERC Polar Vortex Review, at 2, 13 (2014), available at [http://www.nerc.com/pa/rrm/January%202014%20Polar%20Vortex%20Review/Polar\\_Vortex\\_Review\\_29\\_Sept\\_2014\\_Final.pdf](http://www.nerc.com/pa/rrm/January%202014%20Polar%20Vortex%20Review/Polar_Vortex_Review_29_Sept_2014_Final.pdf).

<sup>13</sup> PJM, Analysis of Operational Events and Market Impacts During the January 2014 Cold Weather Events at 25 (May 8, 2014), available at <http://www.pjm.com/~/media/library/reports-notices/weather-related/20140509-analysis-of-operational-events-and-market-impacts-during-the-jan-2014-cold-weather-events.ashx> (hereinafter “PJM Jan. 2014 Cold Weather Events”).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 19-21 (May 8, 2014). FirstEnergy repeatedly states that 9300 MW of gas generation was unavailable during the Polar Vortex. Request 5, 17. This claim is based on the isolated fact during one hour of the Polar Vortex, 9,300 MW of generation was unavailable due to interruptions in the natural gas supply. PJM Jan. 2014 Cold Weather Events at 26. FirstEnergy fails to mention, however, that the amount of coal that experienced outages at that same time was 13,700 MW. *Id.*

FirstEnergy ignores the fact that, although fossil-fueled generators failed to perform at a significant rate during the Polar Vortex, PJM successfully managed the threat without having to resort to blackouts, and “even on the day with the tightest power supplies – January 7 – *several steps remained before electricity interruptions might have been necessary.*”<sup>16</sup> This is in large part because PJM, like each RTO, provides for a planning reserve margin precisely to ensure reliability in the event that many supply resources are impacted at the same time, as occurred during the Polar Vortex.

And FirstEnergy also fails to acknowledge the significance of the reforms carried out after the Polar Vortex, which aimed to address the high generator outage rates during the event. In response to the Polar Vortex, FERC held a technical conference focused on the impacts of the Polar Vortex and actions to respond.<sup>17</sup> In November 2014, FERC issued an order to initiate a review of how each RTO was addressing “fuel assurances,” a “broad concept” intending to encompass “a range of generator-specific and system-wide issues, including the overall ability of an RTO’s/ISO’s portfolio of resources to access sufficient fuel to meet system needs and maintain reliability.”<sup>18</sup> Each affected RTO responded to this directive, and ultimately adopted a series of reforms intended to address winter performance concerns. For example, PJM implemented a series of common-sense nonmarket reforms to improve generators’ preparedness for winter conditions.<sup>19</sup> In the very next winter, despite even higher peak winter loads, PJM saw much lower forced outage rates than during the Polar Vortex, and improved performance among generators that had participated in pre-winter operational testing—one of the reforms PJM put in place following the Polar Vortex.<sup>20</sup> In addition, both PJM and ISO-NE modified their capacity market rules so as to ensure supplier performance during scarcity conditions.<sup>21</sup>

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<sup>16</sup> PJM Jan. 2014 Cold Weather Events at 4.

<sup>17</sup> Notice of Technical Conference, “Winter 2013-2014 Operations and Market Performance in Regional Transmission Organizations and Independent System Operators” AD14-8 (February 21, 2014).

<sup>18</sup> Order on Technical Conferences, 149 FERC ¶ 61,145 (Nov. 20, 2014).

<sup>19</sup> See Protest of Public Interest Organizations, FERC Docket No. ER15-623-000, at Appendix B (summarizing PJM’s extensive measures to improve generator preparedness).

<sup>20</sup> See PJM Interconnection, 2015 Winter Report (May 13, 2015), at <http://www.pjm.com/-/media/library/reports-notices/weather-related/20150513-2015-winter-report.ashx?la=en>, at 5-6.

<sup>21</sup> See Order on Proposed Tariff Revisions, 151 FERC ¶ 61,2018 (2015); Order on Tariff Filing and Instituting Section 206 Proceeding, 147 FERC ¶ 61,172 (2014).

While FirstEnergy suggests that the Capacity Performance program somehow “failed” because it did not spur the development of new gas supply contracts,

Finally, FirstEnergy's Request would support a fleet of merchant coal units that, in fact, *performed quite poorly* during the Polar Vortex.<sup>22</sup> Analysis by Synergy Energy Economics of hourly generation data reveals that, after initially ramping up to meet growing demand, the coal fleet's performance began to decline even before the peak hour on January 6, 2014.<sup>23</sup> By PJM's winter peak on the evening of the 7<sup>th</sup>, coal output had fallen by more than 2,500 MW relative to its peak from the prior day.<sup>24</sup> Even among units that remained online, most coal units provided less output at the season peak than they had the previous day.

2. *The recent Bomb Cyclone weather event and resulting NETL Report do not justify FirstEnergy's request for DOE to prop up uneconomic coal and nuclear units in PJM.*

In an apparent effort to distinguish its request from the rejected Proposed Rule, FirstEnergy relies heavily on a recently released National Energy Technology Laboratory report ("NETL Report") that purports to find that coal-fired generating units were critical to preserving "resiliency" in PJM and other RTOs/ISOs during the "Bomb Cyclone" winter event in late December to early January.<sup>25</sup> The NETL Report's claim about the resiliency of existing coal units in PJM is based on the fact that during the Bomb Cyclone, coal generation increased more in comparison to the level of generation from December 1 through 26, 2017 than did other forms of generation. FirstEnergy extrapolates from the report that the impacts of the Bomb Cyclone show that "immediate action" to prop up uneconomic coal and nuclear units is "critical."<sup>26</sup>

FirstEnergy's reliance on the NETL Report is unavailing because that report does not actually measure resilience in PJM. Instead, as Michael Goggin at Grid

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Request 11, the company does not address whether that program has, in fact, increased reliability and resiliency of the grid by incentivizing many coal and gas units to weatherize and improve their preparedness for winter events.

<sup>22</sup> Public Interest Organization Initial Comments, RM18-1-000, Appendix E, at E-15.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> FirstEnergy Request at 3-8, citing National Energy Technology Laboratory, Reliability, Resilience, and the Coming Wave of Retiring Baseload Units Volume I: The Critical Role of Thermal Units During Extreme Weather Events (Mar. 13, 2018) ("NETL Report"), available at <https://www.netl.doe.gov/research/energy-analysis/search-publications/vuedetails?id=2594>

<sup>26</sup> FirstEnergy Request at 3.

Strategies LLC has explained,<sup>27</sup> “the report employs a flawed metric of resilience that does not indicate the performance of different types of generators, but instead simply finds which energy sources are the most expensive.” In particular, coal generation was able to increase significantly during the Bomb Cyclone only because those coal units were too costly to operate earlier in December and, therefore, were either idle or only partially utilized. The fact that those idle or partially utilized coal plants increased their generation during the Bomb Cyclone shows only that those coal generators are uncompetitive unless electricity and gas prices increase significantly. Nothing in the NETL Report shows that such increased generation, or the substantially increased costs that it would entail, are necessary to ensure the resiliency or reliability of the PJM system. All bulk electric systems will have some generation that is more expensive and is therefore used primarily during peak load conditions. In PJM’s current generation portfolio many merchant coal plants function (inefficiently) as peaking units, but when those units retire others will take their place as PJM always procures enough generation capacity to meet its reserve margin requirement. In fact, PJM is currently oversupplied and has substantially more generating capacity than it needs.

The NETL Report is unhelpful to FirstEnergy’s effort to take advantage of the Bomb Cyclone because the report fundamentally misses the point. As Michael Goggin explains:

A true examination of resilience would assess actual performance in keeping the lights on for customers. Such an effort should focus on the transmission and distribution system failures that cause the vast majority of customer outages. Such an analysis would also include a range of threats to the power system.

Neither the NETL Report or FirstEnergy’s request provide such an analysis. Instead, they rely on a simplistic assessment that shows that many coal units in PJM are expensive, but fails to support FirstEnergy’s claim that they are critically needed.

In an effort to bolster its case, FirstEnergy seizes on a statement in the NETL Report that demand in PJM “could not have been met without coal” to claim that propping up coal units that are planning to retire by 2025 is necessary.<sup>28</sup> But that claim in the NETL Report, which focuses on capacity rather than generation, is meaningless because it relies on the unrealistic assumption that no other capacity

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<sup>27</sup> Michael Goggin, Fossil Lab Misses Mark in Cold Weather “Resilience” Report, (Mar. 28, 2018), available at <http://sustainableerc.org/fossil-lab-misses-mark-in-cold-weather-resilience-report/>.

<sup>28</sup> FirstEnergy Request at 4, citing NETL Report at 17.

would replace the retiring coal.<sup>29</sup> In reality, substantial amounts of new generation has come online as coal units have retired over the past eight years, as PJM recently detailed:

On the resource side, it should be noted that although PJM saw about 22,000 MW of coal units retire since 2010, the capacity market attracted more than 37,000 MW of new generation since 2007, of which more than 21,000 MW of new generation was placed in service between 2010 and 2017. This has resulted in a current PJM reserve margin of 29.1 percent, which is well above the targeted reserve margin of 16.6 percent for 2017 and 16.1 percent for 2018.<sup>30</sup>

There is no reason to believe that future coal and nuclear unit retirements that may occur by 2025 would not similarly be met with new resources, including renewables, demand response, and energy storage.

Echoing the NETL Report, FirstEnergy proclaims serious concerns about the fact that many of the coal units that dispatched during the Bomb Cyclone are expected to retire in the coming years.<sup>31</sup> In support, FirstEnergy notes that PJM's President has recently testified that 1,410 MWs of nuclear generation and 3,688 MWs of coal generation that operated during the Bomb Cyclone is scheduled to retire in the next five years.<sup>32</sup> The Company neglects to mention, however, that PJM went on to explain that those retiring coal units had a significantly higher forced outage rate (ranging from 16% to 31.7%) during the Bomb Cyclone than the 8% to 11.7% forced outage rate for the non-retiring coal units during that same time.<sup>33</sup> In other words, on the metric that FirstEnergy claims to be concerned

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<sup>29</sup> NETL Report at 17 (noting that “any retiring units that were dispatched during the event would have to be replaced.”).

<sup>30</sup> U.S. Sen. Comm. on Energy and Nat. Res., *The Performance of the Electric Power System in the Northeast and Mid-Atlantic During the Recent Winter Weather Events, Including the Bomb Cyclone*, Questions for the Record Submitted to Mr. Andrew Ott, Response to Question 1 from Sen. Lisa Murkowski (Jan. 23, 2018).

<sup>31</sup> FirstEnergy Request at 7.

<sup>32</sup> FirstEnergy Request at 7, citing U.S. Sen. Comm. on Energy and Nat. Res., *The Performance of the Electric Power System in the Northeast and Mid-Atlantic During the Recent Winter Weather Events, Including the Bomb Cyclone*, Questions for the Record Submitted to Mr. Andrew Ott, Response to Question 2 from Sen. Mike Lee (Jan. 23, 2018).

<sup>33</sup> U.S. Sen. Comm. on Energy and Nat. Res., *The Performance of the Electric Power System in the Northeast and Mid-Atlantic During the Recent Winter Weather Events, Including the Bomb Cyclone*, Questions for the Record Submitted to Mr. Andrew Ott, Response to Question 2 from Sen. Mike Lee (Jan. 23, 2018).

about—performance during extreme weather events—the coal units that the company wants to force customers to prop up fail.<sup>34</sup>

Ultimately, FirstEnergy’s attempt to use the Bomb Cyclone as an excuse to bail out its coal and nuclear plants fails because the PJM systems performance during that weather event shows that there is no looming resiliency crisis. In fact, PJM itself found that:

During the recent cold snap, PJM did not call a performance assessment interval, a 72-hour maintenance recall or any transient shortage intervals. However, the system was well tested and, as detailed in this report, there were indicators of improved performance of generating resources since 2014. Overall, the grid and the generation fleet performed well. Even during peak demand, PJM had excess reserves and capacity.<sup>35</sup>

The available evidence plainly shows that in a time of major changes to the energy mix in our country, PJM is ensuring system reliability and the resilience to keep the lights on even during significant weather events such as the Bomb Cyclone. No basis has been provided for disrupting that system with substantial sums of out-of-market payments that would help prop up some of the oldest and least reliable coal units in the system while filling the coffers of the merchant generating companies that own those units.

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<sup>34</sup> PJM also noted that it “does not see any challenge to reliability or fuel diversity from the announced retirements.” U.S. Sen. Comm. on Energy and Nat. Res., *The Performance of the Electric Power System in the Northeast and Mid-Atlantic During the Recent Winter Weather Events, Including the Bomb Cyclone, Questions for the Record Submitted to Mr. Andrew Ott, Response to Question 2 from Sen. Mike Lee* (Jan. 23, 2018).

<sup>35</sup> PJM INTERCONNECTION, PJM COLD SNAP PERFORMANCE DEC. 28, 2017 TO JAN. 7, 2018 (Feb. 26, 2018), available at <http://www.pjm.com-/media/library/reports-notices/weather-related/20180226-january-2018-cold-weather-event-report.ashx>. PJM has also noted that it had 5,400 MWs of emergency demand response available during the Bomb Cyclone that it did not end up needing to utilize. U.S. Sen. Comm. on Energy and Nat. Res., *The Performance of the Electric Power System in the Northeast and Mid-Atlantic During the Recent Winter Weather Events, Including the Bomb Cyclone, Questions for the Record Submitted to Mr. Andrew Ott, Response to Question 2 from Sen. Lisa Murkowski* (Jan. 23, 2018).

#### IV. CONCLUSION

For the foregoing reasons, Sierra Club asks the Department of Energy to promptly deny the request of FirstEnergy Solutions.

Sincerely,

/s/ Casey Roberts

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**CERTIFICATE OF SERVICE**

I hereby certify that, to the best of my knowledge, I have this 10th day of April 2018 served the foregoing upon each person designated for service in this proceeding.

/s/ Casey Roberts  
Casey Roberts



Document 41

**Tishekia E. Williams**  
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April 11, 2018

**VIA OVERNIGHT MAIL AND EMAIL**

The Honorable James Richard Perry  
Secretary of Energy  
U.S. Department of Energy  
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Bruce Walker  
Assistant Secretary,  
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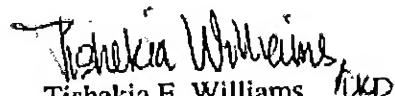
Catherine Jereza  
Deputy Assistant Secretary  
U.S. Department of Energy  
Office of Electricity Delivery and Energy Reliability  
1000 Independence Avenue, S.W.  
Washington, DC 20585

**Re: First Energy Solutions Corp. March 29, 2018 Request for Emergency Order  
Duquesne Light Company's Motion to Intervene**

Dear Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza:

Enclosed is Duquesne Light Company's Motion to Intervene in the above proceeding of First Energy Solutions Corp.'s Request For Emergency Action. Should you have any questions please feel free to contact me

Respectfully Submitted,

  
Tishekia E. Williams *AKD*  
Attorney ID#208997

Enclosure

UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY

Request for Emergency Order Pursuant to :  
Federal Power Act Section 202(c) By :  
FirstEnergy Solutions Corp. : Docket No. \_\_\_\_\_

DUQUESNE LIGHT COMPANY'S  
MOTION TO INTERVENE

Pursuant to the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC") 10 C.F.R. § 205.374, Duquesne Light Company ("Duquesne Light") hereby moves to intervene in FirstEnergy Solutions Corp.'s ("FirstEnergy") application to the Secretary of Energy, Mr. James Richard Perry, ("Secretary") for an emergency order under Section 202(c) of the Federal Power Act. Duquesne Light received notification of FirstEnergy's application on April 9, 2018 and files this response within three (3) days of receipt as required by 10 C.F.R. § 205.374. Duquesne Light respectfully seeks to intervene in the above-referenced proceeding for the following reasons:

Duquesne Light is a public utility as the term is defined under Section 102 of the Public Utility Code, 66 Pa.C.S. § 102 and certificated by the Commission to provide electric distribution service for more than 580,000 Pennsylvania customers in portions of Allegheny and Beaver counties. Duquesne Light is also an electric distribution company ("EDC") and a default service provider as defined under Section 2803 of the Public Utility Code. 66 Pa.C.S. § 2803. Duquesne Light's transmission facilities are presently operated subject to the functional control of PJM Interconnection, L.L.C. ("PJM"). As a fellow PJM market participant with FirstEnergy, Duquesne Light has a direct and substantial interest in the outcome of this proceeding and its interests cannot be adequately represented by any other party. Duquesne Light anticipates FirstEnergy's application, if rejected, may have an impact on Duquesne Light's ability to supply its customers with reliable and uninterrupted service. It is therefore appropriate and in the public interest that Duquesne Light be permitted to intervene in this proceeding and participate with full rights as a party. Duquesne Light requests that interested parties have 60 days to file comments and/or provide relevant analysis.

Respectfully Submitted,

By: /s/ Tishekia Williams  
Assistant General Counsel, Regulatory

Duquesne Light Company  
411 Seventh Avenue, 15th Fl.  
Pittsburgh, PA 15219  
Phone: 412-32932-1541  
E-mail: Twilliams@duqlight.com

Dated: April 11, 2018

**Standley, Erica**

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**From:** IP\_LonnieStephenson <IP\_LonnieStephenson@IBEW.org>  
**Sent:** Wednesday, April 11, 2018 1:42 PM  
**To:** Secretary Perry  
**Subject:** Federal Power Act, Section 202(c)  
**Attachments:** 10 APR 11 PM3:50  
Federal Power Act, Section 202(c).pdf

Dear Secretary Perry:

Attached please find my letter regarding Section 202(c) of the FPA.

Sincerely yours,

Lonnie R. Stephenson  
IBEW International President



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**LONNIE R. STEPHENSON**  
International President  
  
**KENNETH W. COOPER**  
International  
Secretary-Treasurer

April 11, 2018

**VIA EMAIL**

The Honorable Rick Perry  
Secretary of the U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, DC 20585

**Re: Federal Power Act, Section 202 (c)**

Dear Secretary Perry:

On behalf of the 775,000 active members and retirees of the International Brotherhood of Electrical Workers (IBEW), I write to encourage the Department of Energy to exercise their authority under the Federal Power Act, 202 (c) to provide emergency cost recovery for baseload generation units that provide grid reliability and resiliency to the electric grid. Many of the baseload generation units that provide grid stability and reduce voltage fluctuations will be impacted by the forced early retirement of these units.

The IBEW represents workers employed in a variety of fields directly and indirectly related to power generation and the electric grid. Our experience spans over 125 years. We are the best trained, most professional workforce in the electrical industry.

Electrical grid voltage must be maintained 24 hours a day, seven days a week. The grid must balance consumption and production at all times; any significant imbalance could cause grid instability or severe voltage fluctuations, and cause failures within the grid. While other sources of energy provide electrical energy they simply do not provide the same type of security and resiliency that baseload power plants do. That is because these baseload units have on-site fuel supplies to ensure these plants can withstand disturbances such as severe weather, interruptible fuel contracts, attacks on infrastructure, or other catastrophic events that upset fuel delivery.

Baseload generation provided the most resilient form of generation during the most recent cold spell in the northeast (Bomb Cyclone), according to the DOE's National Energy Technology Laboratory (NETL) report analyzing the resilience of different electricity resources. The reliability and resiliency provided by baseload generation does come with a price and maintaining this reliability will require an emergency order on behalf of the Department of Energy.





INTERNATIONAL  
BROTHERHOOD  
OF ELECTRICAL  
WORKERS®

The Honorable Rick Perry  
April 11, 2018  
Page 2

This emergency order under the FPA, Section 202 (c) is necessary to assure that when a customer expects the grid to provide reliable power for their business or home the local utility can provide that service 24 hours a day and 7 days a week. On behalf of the IBEW, I encourage the Department of Energy to move forward with an emergency order to provide cost recovery to the baseload generation units providing that service.

Sincerely yours,

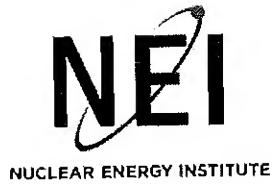
A handwritten signature in black ink that reads "Lonnie R. Stephenson".

Lonnie R. Stephenson  
International President

LRS:kab

**MARIA KORSNICK**  
*President and Chief Executive Officer*

1201 F Street NW, Suite 1100  
Washington, DC 20004  
P: 202.739.8187  
mgk@nei.org  
nei.org



Document 43

April 11, 2018

The Honorable Rick Perry  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585

Dear Mr. Secretary:

Our nation's nuclear power plants deliver benefits that go far beyond a reliable and resilient electrical grid. Nuclear energy contributes to a strong economy, a cleaner environment, and national security. Yet today we are at risk of losing much of what nuclear energy delivers.

FirstEnergy Solutions has announced plans to shut down several electricity generation facilities, including four nuclear reactors at three sites – two reactors each in Ohio and Pennsylvania.<sup>1</sup> These four reactors join eight others that have already announced plans to shut down, and another six that have permanently closed over the past five years. The announcement of these additional nuclear retirements is further proof that the industry has reached an inflection point in the debate over market reforms to recognize the value of the nation's largest and most resilient source of emissions-free energy. The simple fact is that nuclear energy's many benefits are not being recognized by the markets in which they operate. We are therefore writing to request that immediate action be taken to prevent the closure of these four nuclear power reactors and to more fully recognize the benefits that nuclear energy delivers to our nation.

As demonstrated by the recent announcement that Exelon's Three Mile Island reactor will prematurely shut down in September 2019<sup>2</sup>, once a deactivation decision is made, the plant owner ceases investment in capital investments, including fuel. Moreover, refueling outages must be planned a year in advance. Thus, in the case of TMI and the FirstEnergy Solutions plants, without urgent action, it will be too late to reverse these decisions and allow for continued operation.

Nuclear energy accounts for nearly 20 percent of the electricity generated in the United States. And regardless of what you value in our electricity system, nuclear energy delivers. Our nation's 99 nuclear power reactors have an unmatched combination of attributes that are central to a clean, modern electrical grid, but that are under-valued or not valued at all in most electricity markets.

For example, if you value system resilience and low electricity prices, you should value that nuclear plants operate around the clock for up to two years between refuelings, providing valuable fuel security,

<sup>1</sup> See <https://www.fes.com/content/fes/home/restructuring.html>

<sup>2</sup> <http://www.exeloncorp.com/newsroom/exelon-to-retire-three-mile-island-generating-station-in-2019>

The Honorable Rick Perry

April 11, 2018

Page 2

reliability and price stability to our electricity markets. Losing these and other nuclear power reactors would imperil the resilience of the grid and drive up costs to consumers. A recent Department of Energy study<sup>3</sup> showed the PJM electricity system was heavily reliant on these and other economically challenged plants to provide generation during the bomb cyclone event this winter. Even with these plants helping to provide power, electricity prices soared above \$200 per megawatt hour as natural gas prices spiked. Managing severe cold weather events without these nuclear plants will be costlier as the system becomes increasingly dependent on generation that depends on “just-in-time” fuel deliveries and lacks firm fuel supply capabilities.

In addition, multiple studies have made clear that when nuclear plants shut down, electricity prices rise – even under normal weather conditions. For example, the Brattle Group<sup>4</sup> found that New York would save customers a billion dollars a year by acting to preserve nuclear plants. Providing financial support for nuclear power plants facing premature closure decisions will cost consumers far less than any of the alternatives.

If you value clean electricity generation, you should value nuclear energy as our nation’s single-largest source of carbon-free generation, representing nearly 60 percent of all zero-carbon electricity. In addition, nuclear energy generation emits no sulfur dioxide, nitrogen oxides, mercury, and particulate emissions. The four nuclear reactors announced for closure generated more non-emitting electricity last year than all of the wind and all of the solar produced in PJM combined. If these reactors close, carbon emissions will increase over 20 million metric tons, the equivalent of putting over 4 million additional cars on the road. It simply won’t be feasible to replace all or even most of the lost clean energy generation with renewables; the increased fossil fuel generation that would replace the lost nuclear generation would wipe out more than 25 years of progress toward a cleaner electricity system.

If you value national security and global influence, you should be concerned that the U.S. leads the world in nuclear energy generation, but has seen its civil nuclear leadership erode as Russia and China have captured an increasing share of the global market.<sup>5</sup> For several decades, our strong domestic nuclear industry has helped the U.S. enforce the world’s highest standards for nuclear safety and nonproliferation. American influence is strengthened through the century-long relationships built when the U.S. engages in nuclear commerce with another nation, and other nations seek us out as commercial partners in part because we operate the safest and most efficient nuclear power plants in the world. Unfortunately, other nations will be increasingly less likely to look to the U.S. for nuclear products and services if we let our operating nuclear fleet continue to shrink.<sup>6</sup>

And finally, if you value well-paying, long-term jobs, you should know that losing these and other reactors would have dire consequences for the communities that host the plants. For example, closure would mean the loss of over 3,000 full-time jobs for the Ohio and Pennsylvania employees who work at the four plants, as well as thousands more jobs in the surrounding communities that are supported by their economic activity. This translates into the loss of millions of dollars in taxes and negative impacts

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<sup>3</sup> <https://www.netl.doe.gov/research/energy-analysis/search-publications/vuedetails?id=2594>

<sup>4</sup> [http://files.brattle.com/system/news/pdfs/000/001/046/original/comments\\_on\\_the\\_new\\_york\\_dps\\_\(2\).pdf](http://files.brattle.com/system/news/pdfs/000/001/046/original/comments_on_the_new_york_dps_(2).pdf)

<sup>5</sup> <https://static1.squarespace.com/static/58ec123cb3db2bd94e057628/t/59947949f43b55af66b0684b/1502902604749/EFI+nuclear+paper+17+Aug+2017.pdf>

<sup>6</sup> [https://csis-prod.s3.amazonaws.com/s3fs-public/legacy\\_files/files/publication/130719\\_Wallace\\_RestoringUSLeadershipNuclearEnergy\\_WEB.pdf](https://csis-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/130719_Wallace_RestoringUSLeadershipNuclearEnergy_WEB.pdf)

The Honorable Rick Perry

April 11, 2018

Page 3

to the GDP of each state. The economic hardships faced by other communities where nuclear plants have already shut down should both alarm and motivate state and national leaders to act.

The announcement by FirstEnergy Solutions demonstrates the urgency for federal policymakers to act in markets where nuclear energy is undervalued. All appropriate options should be explored to prevent the premature closure of nuclear plants and preserve the nuclear energy option. It is past time for the federal government to ensure proper valuation of nuclear energy's many attributes in electricity markets and to take other measures to preserve nuclear energy for our nation's future.

As the trade association for the nation's largest source of emissions-free energy, NEI urges policymakers to pursue long-term sustainable reforms to market rules that will correct widely acknowledged flaws that unfairly disadvantage nuclear plants, without interfering with state planning processes and regions (such as MISO) where federal markets are functioning. We have advocated in prior comments to FERC for "cost-of-service compensation for nuclear generation units, at least until other market structures are put in place that appropriately value the resiliency attributes that nuclear generation units provide."<sup>7</sup> Accordingly, a Section 202(c) remedy for nuclear resources that are facing premature retirement can provide a necessary bridge before longer-term reforms can be enacted. In developing longer-term reforms, federal policymakers should consider narrowly tailored action, including supportive tax policies (including expanded production tax credits and investment tax credits), inclusion of nuclear energy in federal energy procurement goals and mandates, market design changes that allow all resources to set price, and recognition of nuclear energy's non-emitting attributes consistent with recognition provided to other non-emitting resources. The policy tools discussed above have long been used to support other components of our nation's "all of the above" energy portfolio; policymakers should now do the same for nuclear energy. And when considering these policies, we encourage you to work closely with states and FERC to ensure that any federal proposal makes sense for energy producers and consumers throughout the nation.

There is still time for policymakers to act. Leaders in New York and Illinois crafted solutions that recognize the contribution the states' nuclear plants make to maintaining clean air for their citizenry. The state of Connecticut has also acted to level the playing field for all sources of clean energy, including nuclear, to support the state's electricity needs. Federal policymakers should avoid interfering with these state programs which, like renewable portfolio standards, protect a valuable state interest in protecting the environment. But while state policy actions have been essential in preserving nuclear assets, it is imperative that federal policymakers assure federal policies appropriately value nuclear energy's attributes, to ensure it continues making important contributions to America's energy, environmental, national security and economic interests.

Sincerely yours,



Maria Korsnick

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<sup>7</sup> <https://www.nei.org/resources/letters-filings-comments/nei-comments-ferc-grid-resiliency-rulemaking>



1101 K Street NW, Suite 700 | Washington DC 20005-4210 | Voice: 202.682.1390 | Email: [jhughes@elcon.org](mailto:jhughes@elcon.org)

John P. Hughes  
President & Chief Executive Officer

April 12, 2018

The President  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Re: U.S. Manufacturers Urge Denial of the Request for Emergency Order Filed by FirstEnergy Solutions Corp.  
under Section 202(c) of the Federal Power Act

Dear Mr. President:

ELCON, the national association of large industrial consumers of electricity, respectfully requests that the Administration reject FirstEnergy's Section 202(c) request and decline to take other federal action to interfere with retiring power plants. Such action would be unnecessarily anti-competitive and would increase the price of electricity to businesses and consumers, resulting in a substantial loss of U.S. manufacturing capacity and jobs. No one has a greater interest in reliable electricity supply than the industrial consumers whose operations depend on it, but there is no emergency that requires federal response.

The historically low electricity prices that have resulted from the markets' operation have substantially benefited the competitiveness of U.S. manufacturers, benefits that would be lost if they were forced to pay billions in additional payments to the owners of uneconomic coal and nuclear power plants. The retirement of uneconomic plants represents a normal, efficient functioning of competitive markets and has been ongoing for decades. In fact no market operator has requested federal action on behalf of closing plants, even when they acknowledge, such as PJM, that diversity in electricity sources merits further attention.

The circumstances that would trigger Section 202(c) or other federal action simply are not present. A 2017 DOE Staff Report concludes: "while markets have evolved since their introduction, they are currently functioning as designed—to ensure reliability and minimize the short-term costs of wholesale electricity—despite pressures." NERC's CEO stated that "the state of reliability in North America remains strong, and the trend line shows continuing improvement year over year". FERC also relied on "extensive comments" from PJM and other system operators which identified no "past or planned generator retirements that may be a threat to grid resilience." The cost of honoring requests by coal and nuclear interests will be borne by consumers, even though retirements like those with FES are years away and even though the DOE regulations clearly state that "economic factors relating to service . . . generally will not be considered as emergencies unless the inability to supply electric service is imminent."

The government cannot attempt to pick winners and losers and must certainly not treat U.S. manufacturing jobs as inferior to those at uneconomic power plants. Allocation of resources should be left to the competitive markets.

Most Respectfully,

Cc: The Honorable Rick Perry, Secretary of Energy  
The Honorable Lawrence Kudlow, Assistant to the President for Economic Policy & NEC Director



April 12, 2018

President Donald J. Trump  
The White House  
Washington, D.C. 20500

1401 New York Avenue, NW  
Suite 950  
Washington, DC 20005-2100  
(202) 628-8200

Dear Mr. President:

This letter is prompted by the unprecedented and unjustified request for an "emergency order" under Federal Power Act Section 202(c) from FirstEnergy Solutions (FES). The Electric Power Supply Association (EPSA) appreciates that your Administration is taking the time to carefully review this request given the widespread negative ramifications were it to be granted, or other steps taken to disadvantage FES's competitors and the businesses and consumers reliably served by them. There is simply no emergency.

EPSA members are independent power producers that compete with utility-affiliated entities such as FES to generate electricity. The PJM regional grid that would be negatively impacted by the 202(c) request, or other forms of intervention, is the largest in the country and where most EPSA assets are located. EPSA members own far more generation in PJM than FES, primarily through members' coal and natural gas plants.

EPSA joined in a recent filing submitted to the U.S. Department of Energy (DOE) asking for public comment on the FES application and pointing out its legal flaws. EPSA writes to you today because granting the FES request, or providing other forms of assistance to a subset of competitors, is fundamentally at odds with the wise course you have charted for our country. This includes your goals for robust economic growth, improving U.S. competitiveness, and modernizing infrastructure including the power grid.

Electricity is a major input cost for manufacturers, small businesses and households. Under your leadership, U.S. domestic energy is bringing tangible economic benefits through abundant energy supplies at affordable prices. Measures such as 202(c) orders, or other steps to place thumbs on the scale, would needlessly raise electricity costs by billions of dollars annually. This is why DOE has heard from so many who represent the 65 million customers in the PJM region that would be adversely affected.

Since all electricity suppliers face the challenges of current market conditions and the ongoing exciting transformation of how electricity is produced and consumed, federal and state policies should be pursued on a fuel neutral basis to best serve consumers.

Sincerely,

John E. Shelk  
President & CEO



April 12, 2018

**Via Electronic Mail**

The Honorable James Richard Perry  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington DC 20585  
The.secretary@hq.doe.gov  
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Denise C. Goulet  
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T. 202-753-3439  
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Mr. Bruce Walker  
Assistant Secretary  
Office of Electric Delivery and Energy Reliability  
U.S. Department of Energy  
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McCarter & English, LLP  
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Ms. Catherine Jereza  
Deputy Assistant Secretary  
Office of Electric Delivery and Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington DC 20585  
Catherine.jereza@hq.doe.gov

**RE: Motion of North Carolina Electric Membership Corporation to Intervene,  
Protest and Consultative Comments**

BOSTON

HARTFORD

STAMFORD

NEW YORK

NEWARK

EAST BRUNSWICK

PHILADELPHIA

WILMINGTON

WASHINGTON, DC

Dear Secretary Perry, Assistant Secretary Walker and Deputy Assistant Secretary Jereza:

Attached is North Carolina Electric Membership Corporation's ("NCEMC") Motion to Intervene, Protest and Consultative Comments in the proceeding concerning FirstEnergy Solutions Corporation's Request for Emergency Action under Section 202(c) of the Federal Power Act. NCEMC is a Generation and Transmission ("G&T") rural electric cooperative, and a participant in the electric markets operated by PJM Interconnection, LLC. It also is a user of critical electric infrastructure within the United States. NCEMC opposes FES' request for emergency action because there is no emergency and no justification for the relief requested. If the Request is not denied outright, the Department should provide all interested parties 60 days to submit comments, as requested by the Electric Power

Letter to Secretary Perry  
April 12, 2018  
Page 2

Supply Association and other organizations in a request filed on Friday, March 30, 30218.

Sincerely,

/s/Denise C. Goulet  
Denise C. Goulet  
Sean T. Beeny

Attorneys for North Carolina Electric Membership Corporation

cc: Official Service List

UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY

Request For Emergency Order )  
Pursuant To Federal Power Act Section )  
202(c) By FirstEnergy Solutions Corp. )      DOE Docket No. \_\_\_\_\_

**MOTION TO INTERVENE, PROTEST AND CONSULTATIVE COMMENTS OF  
NORTH CAROLINA ELECTRIC MEMBERSHIP CORPORATION**

The North Carolina Electric Membership Corporation (“NCEMC”), pursuant to Rules 211, 212 and 214 of the Federal Energy Regulatory Commission (“FERC”) Rules of Practice and Procedure, 18 C.F.R. § 211, 212 and 214 (2018), and the United States Department of Energy’s (“the Department”) regulations, 10 C.F.R. §205.383,<sup>1</sup> submits this Motion to Intervene, Protest and Consultative Comments in the above-captioned proceeding. NCEMC protests the March 29, 2018 Request for Emergency Order Pursuant to Federal Power Act Section 202(c) submitted by FirstEnergy Solutions Corporation (“FES”) in this matter.

**I. PROCEDURAL BACKGROUND**

On March 29, 2018, FES submitted a letter (“Request”) to Energy Secretary James Richard Perry requesting that the Secretary invoke emergency authority under Section 202(c) of the Federal Power Act (“FPA”), 16 U.S.C. § 824a, to find that an emergency condition exists in the PJM Interconnection, LLC (“PJM”) region that requires immediate action by the Department.

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<sup>1</sup> Federal Power Act Section 202(c) and the Department’s policy and regulations provide that FERC’s Rules of Practice and Procedure should be used for procedural guidance in Emergency Order proceedings. Guidance published on the Department’s website points to the Commission’s rules in situations where the Department’s regulations at 10 C.F.R. § 205.370, *et. seq.*, are silent. *See, e.g.*, DOE Answer to Procedural Questions Concerning Rehearing of DOE Order, *District of Columbia Public Service Commission*, Docket No. E0-05-01 (December 30, 2005) at 2. The plain language of Section 202(c)(5) of the Federal Power Act, enacted in 2016, reinforces this principle. The FES Request is a proceeding under Chapter 12 of the Federal Power Act, and the Commission’s Rules of Practice and Procedure apply. *See* 16 U.S. Code § 825g(b) [FPA Section 308] (“All hearings, investigations, and proceedings under this chapter shall be governed by rules of practice and procedure to be adopted by the Commission.”).

FES requested that the Secretary order PJM to enter into contracts with “certain existing nuclear and coal-fired generators” located in PJM for the supply of energy, capacity, and ancillary services in order to “maintain the stability of the electric grid.”<sup>2</sup> FES also requests that the Secretary order PJM to “promptly compensate at-risk merchant nuclear and coal-fired power plants for the full benefits they provide.”<sup>3</sup> In the event PJM and the owners of the resources are unable to reach agreement regarding compensation and other contractual terms, FES requests that “the Secretary step in and determine the just and reasonable compensation and conditions.”<sup>4</sup>

## II. COMMUNICATIONS

Service should be made upon and communications should be addressed to:

Richard Feathers, Esq.  
Senior Vice President and General Counsel  
Charlie Bayless, Esq.  
Associate General Counsel  
North Carolina Electric Membership  
Corporation  
3400 Sumner Boulevard  
Raleigh, NC 27616  
(919) 872-0800 (Voice)  
(919) 645-3437 (Fax)  
E-mail: [rick.feathers@ncemcs.com](mailto:rick.feathers@ncemcs.com)  
[charlie.bayless@ncemcs.com](mailto:charlie.bayless@ncemcs.com)

Sean T. Beeney, Esq.  
Denise C. Goulet, Esq.  
McCarter & English, LLP  
1015 Fifteenth Street, N.W.  
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E-mail: [sbeeney@mccarter.com](mailto:sbeeney@mccarter.com)  
[dgoulet@mccarter.com](mailto:dgoulet@mccarter.com)

## III. MOTION TO INTERVENE

NCEMC is a generation and transmission cooperative responsible for the full or partial power supply requirements of its 25 members throughout the state of North Carolina. As such, it is a user of critical electric infrastructure within the United States, within the meaning of 10 C.F.R. §205.383 (a)(5). NCEMC’s 25 distribution cooperatives supply electricity to approximately 1 million homes, farms, and businesses in which more than 2.5 million North

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<sup>2</sup> Request at 1.

<sup>3</sup> *Id.*

<sup>4</sup> Request at 31-32.

Carolinians live and work. NCEMC's distribution cooperative loads are located throughout the service areas of three investor-owned public utilities: Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, both subsidiaries of Duke Energy Corporation, and Virginia Electric and Power Company, doing business as Dominion Virginia Power in Virginia and as Dominion North Carolina Power in North Carolina (hereinafter referred to collectively as "Dominion").

NCEMC is a member of PJM, which operates the transmission systems of several electric utilities, including the transmission facilities owned by Dominion. NCEMC purchases transmission services from PJM over Dominion's transmission facilities to serve the loads of its six member cooperatives that distribute power at retail in the Dominion transmission zone of the PJM region. NCEMC also participates in PJM's energy, ancillary services and capacity markets.

The Department's ruling in this matter may have a significant and adverse effect on the rates paid by NCEMC for wholesale supplies it purchases to serve its member distribution cooperatives and their retail consumers in PJM. The cost of the payments envisioned in FES' Request that are to be provided to the coal and nuclear generating facilities in PJM likely would be recovered from load-serving entities in the PJM region, including NCEMC. As a current PJM Member, a transmission customer in PJM's Dominion Zone, and a participant in PJM's capacity, energy and ancillary services markets, NCEMC has an interest that may be directly affected by the outcome of this proceeding. This interest cannot be adequately represented by any other party, and NCEMC's participation in this case is necessary to adequately protect its interests. NCEMC should be permitted to intervene as its participation would serve the public interest.

#### **IV. PROTEST AND CONSULTATIVE COMMENTS**

NCEMC opposes FES' Request because there is no emergency in the PJM region, and no justification for the relief requested. If the Department decides not to reject the Request outright,

it should provide an opportunity for the filing of detailed comments by entities that could be affected by the Department's ruling on this matter. NCEMC reserves the right to supplement this preliminary pleading to explain in detail why granting the Request would result in unjust, unreasonable and unduly discriminatory rates for its North Carolina customers.

#### **V. CONCLUSION**

For the foregoing reasons, NCEMC requests that it be permitted to intervene and participate in this proceeding as a PJM market participant and a user of critical electric infrastructure within the United States. If the Department does not reject the FES Request outright, The Department should provide interested parties, by notice published in the Federal Register, 60 days to file comments on the Request.

Respectfully submitted,

By: /s/ Denise C. Goulet

Sean T. Beeney  
Denise C. Goulet  
McCarter & English, LLP  
Twelfth Floor  
1015 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 753-3400

Richard Feathers  
Senior Vice President and General Counsel  
Charlie Bayless  
Associate General Counsel  
North Carolina Electric Membership Corporation  
3400 Sumner Boulevard  
Raleigh, North Carolina 27616  
(919) 872-0800

Attorneys for  
North Carolina Electric Membership Corporation

DATED: April 12, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document by first-class mail, electronic means, or hand delivery, upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. on this 12<sup>th</sup> day of April, 2018.

By: /s/ Denise C. Goulet

Denise C. Goulet  
McCarter & English, LLP  
1015 Fifteenth Street, N.W.  
Twelfth Floor  
Washington, D.C. 20005  
(202) 753-3400

**Troy, Angela (CONTR)**

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**From:** Julie Wilson <jwilson@local310.com>  
**Sent:** Friday, April 13, 2018 10:20 AM  
**To:** AskOE  
**Subject:** Federal Power Act Section 202 (c)  
**Attachments:** Fed Enrgy Reg Comm Ltr 10 16 2017.pdf

Good Morning – In the past we have sent you a letter expressing our concern for the ongoing need to support the cost of nuclear and coal-fired units (see attachment). We further believe that an emergency order pursuant to Federal Power Act Section 202 (c) is necessary to secure this reliable power source. Thank You.

Terence P. Joyce  
Business Manager  
Building Laborers' Local 310  
3250 Euclid Ave.  
Cleveland, OH 44115  
216 881-5901  
[tjoyce@local310.com](mailto:tjoyce@local310.com)



# BUILDING LABORERS' UNION, LOCAL No. 310

*Affiliated with Laborers' International Union of North America – AFL-CIO*

3250 EUCLID AVENUE • CLEVELAND, OHIO 44115-2599

PHONE: 216/881-5901 • FAX: 216/881-5928

TERENCE P. JOYCE, *Business Manager*

MICHAEL J. KEARNEY, *Secretary-Treasurer*

October 16, 2017

Federal Energy Regulatory Commission  
Secretary of the Commission  
888 First Street, NE  
Washington, DC 20426

Re: Grid Resiliency Pricing Rule  
FERC Docket No. RM18-1-000

## COMMENTS OF THE BUILDING LABORERS' LOCAL 310 IN SUPPORT OF THE PROPOSED RESILIENCY RULE

On September 28, 2017, the Department of Energy ("DOE") issued the "Grid Resiliency Pricing Rule" (the "Proposal") directing the Federal Energy Regulatory Commission ("FERC") to adopt a rule requiring operators of organized markets to "ensure that certain reliability and resiliency attributes of electric generation sources are fully valued." Such a rule, as contemplated by the regulatory language of the Proposal, will ensure that existing nuclear and coal-fired electric generating stations in Ohio will be compensated appropriately and fully for their costs of operation and will avoid premature retirement. Adoption of that rule will thus sustain the long-term viability of critical power plants, preserve and create jobs, maintain electric reliability, and provide substantial economic benefits to the many hard-working Americans living throughout the region.

The Building Laborers' Local 310 strongly supports the Proposal and shares the Secretary's urgency that FERC act promptly to direct operators of organized markets to issue the requested rule. FERC has the ability to act, and must act, without undue delay to avoid premature closure of crucial power plants and our members' loss of critical economic and reliability benefits. FERC has thoroughly examined how electric markets function and how those markets affect the continued operation of crucial power plants needed for reliability for some time. FERC has the requisite basis to act now. There is no

time for delay. In addition to acting promptly, FERC should also direct organized market operators to issue a comprehensive and enduring set of rules, based on the regulatory language of the Proposal, for the proper compensation of critical power plants. Protracted proceedings undertaken by organized market operators that fail to develop fair, compensatory and transparent rules will only engender market uncertainty and delay in providing sufficient compensation to these facilities, thereby jeopardizing the operation of the very plants that the DOE seeks to maintain in operation.

**I. COMMUNICATIONS**

All communications, correspondence, and documents related to this proceeding should be directed to the following person:

Terence P. Joyce  
Business Manager  
Building Laborers' Local 310  
3250 Euclid Ave., Cleveland, OH 44115  
216 881-5901  
tjoyce@local310.com

**II. DESCRIPTION OF BUILDING LABORERS' LOCAL 310**

Labor Union – Building Construction

**III. DESCRIPTION OF BUILDING LABORERS' LOCAL 310'S INTEREST IN PROCEEDING**

The Building Laborers' Local 310 is a party to a collective bargaining agreement with the owners of baseload coal and nuclear power plants located in Cuyahoga, Lake and Geauga Counties of Ohio. Our members work on major infrastructure and industrial development projects that are dependent on the continued operation of the baseload coal and nuclear power plants. As a result, the wages, terms and conditions of employment of its members may be directly affected by the actions taken by the FERC and operators of organized markets in this proceeding. Thus, the Building Laborers' Local 310 members have a direct and substantial interest in this proceeding. As well, the unique perspective of the Building Laborers' Local 310 and its members will only serve to enhance the record in this proceeding.

#### IV. COMMENTS

The communities where struggling baseload coal and nuclear power plants are located are dependent on the jobs and economic development opportunities the power plants provide. The recent decline in Ohio electric power industry, for example, has led to reductions in operations and capital improvement expenditures at numerous power production and manufacturing facilities across Ohio. This has led to extreme hardship for the thousands of union workers employed in this industry as well as their families.

It is imperative that baseload coal and nuclear plants continue to operate in light of these dire circumstances. Baseload coal and nuclear plants in Ohio provide thousands of MWs of reliable power, and provide union jobs and economic opportunities to Building Laborers' Local 310 members.

Building Laborers' Local #310 sends workers to both the Davis-Besse and Perry Nuclear Power Plants. These Power Plants employ approximately 1,400 people. These Power Plants have a temporary shutdown every 24 months in order to replace some of their fuel and to conduct routine maintenance and safety inspections. These outages can last anywhere from four to six weeks and requires the Power Plants to hire additional contract workers which includes members of Building Laborers' Local 310. This highly skilled workforce requires boilermakers, electricians, iron workers, pipefitters and various other craft personnel to work around the clock to complete the work safely and efficiently. These jobs with overtime, pay wages far above the prevailing incomes of their respective communities. Also, in total, outside contractors, workers and plant personnel contribute nearly \$25 million combined each year in state and local taxes to support schools, police and fire departments and other vital public services. The loss of jobs, tax revenue, and the ripple effect of such losses throughout the local economy, will have a severely detrimental impact on the region.

The issuance of a rule preserving the continued operation of resilient baseload coal and nuclear power plants will maintain a reliable supply of electricity for the region's energy-intensive economy in two ways. First, the preservation of certain plants will avoid the need to replace lost generation with

imports and the associated construction of infrastructure to facilitate such importation. Preserving baseload coal and nuclear power plants will keep these needed, reliable facilities running close to home without the need to depend on distant resources, particularly during catastrophic events like severe storms, to fulfill our region's dynamic need for reliable electricity.

Second, premature plant closures will deplete the stable of highly skilled (and specifically trained and experienced) employees, many of whom have lived in the region for several years and who take great pride in their work. With a depletion of this skilled and experienced group of workers, and the possible replacement of these workers with more distant and perhaps less-skilled individuals, we will see a direct and adverse impact on our ability to maintain the generation facilities that continue to operate and, as important, our ability to respond promptly to severe contingencies affecting the operation of these remaining plants in operation. In short, allowing baseload coal and nuclear power plants to close prematurely will have an adverse impact on the reliability of the region's electricity supply and on the reliable operation of the regional electricity system.

Rates for the sale of electricity that are inadequate to sustain the operation of base load generation facilities that provide reliability and resiliency support cannot be considered to be just and reasonable. Because of the loss of jobs, the significant reduction in payments to local governments, and the decline in electricity resource and grid reliability that would result from deactivation of the nuclear and coal-fired generating facilities in Ohio, it is essential that the FERC adopt a rule, such as that proposed by DOE, which will ensure that such generating facilities are fully compensated for their costs and will remain in operation.

In order to mitigate the risk that such generating units may be deactivated prematurely, the Building Laborers' Local 310 strongly urges FERC to adopt the rule proposed by the DOE as promptly and comprehensively as possible. FERC has a sufficient record to act that will be further bolstered by the comments considered in this proceeding. FERC has thoroughly considered the impact of electric markets on the sustained operation of at-risk power plants and, as noted by the Secretary of the DOE, the

time to act is now given the severe impacts to system reliability and resilience, and national security, attendant to the premature closure of crucial power plants. Any protracted delay in creating fully compensatory market rules will only exacerbate the problem of pre-mature closures.

In acting promptly, FERC should also direct the organized market operators to issue a rule that is not only compensatory (and based on the regulatory language of the Proposal) but comprehensive and enduring. The rules to be issued by operators of organized markets should be fair and transparent, and should ensure that critical power plants can continue to operate for the long-term and without the prospect of repeated re-examination and adjustment to their market compensation. The uncertainty that less than comprehensive and enduring market rules will engender will defeat the very purpose of preserving the extended operation of these much-needed power plants.

Respectfully submitted,



Terence P. Joyce  
Business Manager  
Building Laborers' Local 310

**Troy, Angela (CONTR)**

**From:** Larry Tscherne <larry@ibew245.com>  
**Sent:** Friday, April 13, 2018 11:11 AM  
**To:** AskOE  
**Subject:** Section 202(c)  
**Attachments:** May 2017 IBEW Local 245.pdf; IBEW 245.pdf

For your convenience, I have attached a letter dated May 12, 2017 addressed to Secretary Perry and a letter dated October 16, 2017 addressed to the Federal Energy Regulatory Commission expressing our concerns on the importance of baseloaded generation. As you are aware once these plants are closed they are closed for good. The dedicated highly skilled workforce, the lifeblood of their communities will also be gone along with the strong tax base they provide.

It is my belief you will be receiving comments from many interests outside of the communities these plants support. Interests that will not have to worry about the crippling effect of the loss of highly skilled and good paying jobs.

Thank you in advance for taking the time to review my letters.

Larry J. Tscherne  
Business Manager/Financial Secretary  
IBEW Local 245  
705 Lime City Rd.  
Rossford, Ohio 43460

419-666-3350  
419-666-5545 (Fax)

Phone: (419) 666-3350  
(888) 666-3350  
Fax: (419) 666-5545



# International Brotherhood of Electrical Workers

LOCAL UNION NO. 245

705 LIME CITY ROAD

ROSSFORD, OHIO 43460

May 12, 2017

Dear Secretary Perry,

Unions, labor and power plant workers across the country applaud the Department of Energy's study examining electricity markets, the value of baseload power and the long-term security and resiliency of the electric grid. Baseload coal and nuclear power plants employ more than 154,000 workers, produce major infrastructure projects that put Americans to work, and support a resilient electric grid.

Baseload power plants have long been the "work horses" of the electric system, providing energy to customers 24 hours a day, 365 days a year. With significant on-site fuel reserves, they provide the resiliency required to keep electricity flowing under all circumstances since their operation is not subject to interruption by extreme events such as weather or attacks on infrastructure that disrupt fuel delivery to other generation resources. Recently, EPA Administrator Pruitt noted as much when he talked about the consequences of an attack on key infrastructure. Our nation's security is dependent on maintaining these plants to support a resilient supply of electricity.

However, numerous baseload power plants have permanently shut down in recent years, and many more are expected to close prematurely in the very near future. Once they are gone, they are gone for good. Baseload generation is under serious threat from market-distorting subsidies and mandates, regulations that target these resources, low natural gas prices and markets that don't value resiliency. We are at a crisis point. Further decline in the number of plants will not only impact the grid and national security, it will cost valuable jobs and discourage industrial development opportunities nationwide. This is an outcome America simply can't afford.

Our baseload power plants and the dedicated, skilled workers who operate them are the lifeblood of their communities. They deliver a strong tax base and support between three and eight times more high-paying jobs than do other forms of electricity generation. We depend on these plants to create a robust workforce, and the country depends on them to support a healthy economy and electricity supply.

Unless action is taken, the long-term viability of baseload power plants along with the jobs and substantial economic opportunities they bring is at risk. And, our national security could be compromised if we don't ensure a resilient grid. We encourage the Administration to take prompt and meaningful action to protect baseload power plants and America's energy future.

Sincerely,

A handwritten signature in black ink that reads "Larry Tscherne".

Larry Tscherne  
Business Manager  
IBEW Local 245

Phone: (419) 666-3350  
(888) 666-3350  
Fax: (419) 666-5545



# International Brotherhood of Electrical Workers

LOCAL UNION NO. 245

705 LIME CITY ROAD

ROSSFORD, OHIO 43460

October 16, 2017

Federal Energy Regulatory Commission  
Secretary of the Commission  
888 First Street, NE  
Washington, DC 20426

Re: Grid Resiliency Pricing Rule  
FERC Docket No. RM18-1-000

## COMMENTS OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 245 IN SUPPORT OF THE PROPOSED RESILIENCY RULE

On September 28, 2017, the Department of Energy ("DOE") issued the "Grid Resiliency Pricing Rule" (the "Proposal") directing the Federal Energy Regulatory Commission ("FERC") to adopt a rule requiring operators of organized markets to "ensure that certain reliability and resiliency attributes of electric generation sources are fully valued." Such a rule, as contemplated by the regulatory language of the Proposal, will ensure that existing nuclear and coal-fired electric generating stations in Ohio will be compensated appropriately and fully for their costs of operation and will avoid premature retirement. Adoption of that rule will thus sustain the long-term viability of critical power plants, preserve and create jobs, maintain electric reliability, and provide substantial economic benefits to the many hard-working Americans living throughout the region.

IBEW Local 245 strongly supports the Proposal and shares the Secretary's urgency that FERC act promptly to direct operators of organized markets to issue the requested rule. FERC has the ability to act, and must act, without undue delay to avoid premature closure of crucial power plants and our members' loss of critical economic and reliability benefits. FERC has thoroughly

examined how electric markets function and how those markets affect the continued operation of crucial power plants needed for reliability for some time. FERC has the requisite basis to act now. There is no time for delay. In addition to acting promptly, FERC should also direct organized market operators to issue a comprehensive and enduring set of rules, based on the regulatory language of the Proposal, for the proper compensation of critical power plants. Protracted proceedings undertaken by organized market operators that fail to develop fair, compensatory and transparent rules will only engender market uncertainty and delay in providing sufficient compensation to these facilities, thereby jeopardizing the operation of the very plants that the DOE seeks to maintain in operation.

## **I. COMMUNICATIONS**

All communications, correspondence, and documents related to this proceeding should be directed to the following person:

Larry Tscherne  
Business Mgr. & Financial Secretary  
IBEW Local 245  
705 Lime City Road, Rossford, Ohio 43460  
419-356-4542  
[Larry@IBEW245.com](mailto:Larry@IBEW245.com)

## **II. DESCRIPTION OF IBEW LOCAL 245**

IBEW Local 245 is a progressive labor organization that represents individuals in the Utility, Generation, Construction, Government and Communications industries.

## **III. DESCRIPTION OF IBEW LOCAL 245'S INTEREST IN PROCEEDING**

IBEW Local 245 is a party to a collective bargaining agreement with the owners of baseload coal and nuclear power plants located in Ohio. In addition to working in these plants, our members work on major infrastructure and industrial development projects that are dependent on the continued operation of the baseload coal and nuclear power plants. As a result, the wages, terms

and conditions of employment of its members may be directly affected by the actions taken by the FERC and operators of organized markets in this proceeding. Thus, IBEW Local 245 members have a direct and substantial interest in this proceeding. As well, the unique perspective of IBEW Local 245 and its members will only serve to enhance the record in this proceeding.

#### IV. COMMENTS

The communities where struggling baseload coal and nuclear power plants are located are dependent on the jobs and economic development opportunities the power plants provide. The recent decline in Ohio's electric power industry, for example, has led to reductions in operations and capital improvement expenditures at numerous power production and manufacturing facilities across Ohio. This has led to extreme hardship for the thousands of union workers and nonunion workers employed in this industry as well as their families.

It is imperative that baseload coal and nuclear plants continue to operate in light of these dire circumstances. Baseload coal and nuclear plants in Ohio provide thousands of MWs of reliable power, and provide many union jobs and economic opportunities to IBEW Local 245 members. The Davis Besse and Bayshore generation stations directly employ approximately 240 IBEW Local 245 members, and the maintenance and capital improvement work on these plants supports the local economy by creating thousands of well-paying union jobs for contractors. In addition, these plants contribute millions each year in state and local tax revenues that support local schools, police and fire departments and other vital public services. The loss of jobs, tax revenue, and the ripple effect of such losses throughout the local economy, will have a severely detrimental impact on the region.

The issuance of a rule preserving the continued operation of resilient baseload coal and nuclear power plants will maintain a reliable supply of electricity for the region's energy-intensive

economy in two ways. First, the preservation of certain plants will avoid the need to replace lost generation with imports and the associated construction of infrastructure to facilitate such importation. Preserving baseload coal and nuclear power plants will keep these needed, reliable facilities running close to home without the need to depend on distant resources, particularly during catastrophic events like severe storms, to fulfill our region's dynamic need for reliable electricity.

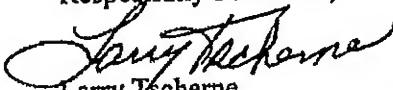
Second, premature plant closures will deplete the stable of highly skilled (and specifically trained and experienced) employees, many of whom have lived in the region for several years and who take great pride in their work. With a depletion of this skilled and experienced group of workers, and the possible replacement of these workers with more distant and perhaps less-skilled individuals, we will see a direct and adverse impact on our ability to maintain the generation facilities that continue to operate and, as important, our ability to respond promptly to severe contingencies affecting the operation of these remaining plants in operation. In short, allowing baseload coal and nuclear power plants to close prematurely will have an adverse impact on the reliability of the region's electricity supply and on the reliable operation of the regional electricity system.

Rates for the sale of electricity that are inadequate to sustain the operation of base load generation facilities that provide reliability and resiliency support cannot be considered to be just and reasonable. Because of the loss of jobs, the significant reduction in payments to local governments, and the decline in electricity resource and grid reliability that would result from deactivation of the nuclear and coal-fired generating facilities in Ohio, it is essential that the FERC adopt a rule, such as that proposed by DOE, which will ensure that such generating facilities are fully compensated for their costs and will remain in operation.

In order to mitigate the risk that such generating units may be deactivated prematurely, IBEW Local 245 strongly urges FERC to adopt the rule proposed by the DOE as promptly and comprehensively as possible. FERC has a sufficient record to act that will be further bolstered by the comments considered in this proceeding. FERC has thoroughly considered the impact of electric markets on the sustained operation of at-risk power plants and, as noted by the Secretary of the DOE, the time to act is now given the severe impacts to system reliability and resilience, and national security, attendant to the premature closure of crucial power plants. Any protracted delay in creating fully compensatory market rules will only exacerbate the problem of pre-mature closures.

In acting promptly, FERC should also direct the organized market operators to issue a rule that is not only compensatory (and based on the regulatory language of the Proposal) but comprehensive and enduring. The rules to be issued by operators of organized markets should be fair and transparent, and should ensure that critical power plants can continue to operate for the long-term and without the prospect of repeated re-examination and adjustment to their market compensation. The uncertainty that less than comprehensive and enduring market rules will engender will defeat the very purpose of preserving the extended operation of these much-needed power plants.

Respectfully submitted,



Larry Tscherne

Business Manager and Financial Secretary  
IBEW Local 245

**From:** john levengood  
**To:** AskOE  
**Subject:** Comment for nuclear energy issue  
**Date:** Friday, April 13, 2018 12:51:31 PM

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Document 49

Dear Secretary Perry,

Local 777 of the International Brotherhood of Electrical Workers ("Local 777") submits this comment to support the use of Section 202(c) of the Federal Power Act, 16 U.S.C. § 824a(c), or other appropriate legal authority, to ensure that the nation's baseload nuclear power plants remain in operation.

Local 777 is the authorized collective bargaining representative for more than 300 of the 700 people who work at Three Mile Island Unit 1 ("TMI 1") in Middletown, PA. TMI 1 is a nuclear power plant with an electric generating capacity of 803 megawatts. The plant is licensed to operate by the Nuclear Regulatory Commission until 2034. Unfortunately, given the economics of the power markets under the existing pricing and resiliency policies of the Federal Energy Regulatory Commission ("FERC") and the PJM Interconnection (the Regional Transmission Organization overseeing the pricing and dispatch of TMI 1), TMI 1 is scheduled to cease operations in September 2019 -- 15 years ahead of schedule.

Moreover, the plant is not subject to temporary disruptions in fuel supplies due to inclement weather, natural disasters, or other events. As is the case for most nuclear reactors, TMI 1 needs to refuel only once every two years. Between refueling outages, the reactor does not require any access to outside fuel supplies. TMI 1's most recent refueling outage ended on October 13, 2017, meaning that the plant is expected to run continuously until its expected permanent shut down on September 30, 2019.

Perhaps most importantly, nuclear power is vitally important in moving the United States and the world toward a sustainable climate. Diverse organizations such as the Union of Concerned Scientists (Nuclear Power & Global Warming, <https://www.ucsusa.org/nuclear-power/nuclear-power-and-global-warming#.WtDFHS7waM8>) and Environmental Defense Fund (John Finnigan, Why We Still Need America's Nuclear Power Plants — At Least for Now, Environmental Defense Fund, <http://blogs.edf.org/energyexchange/2017/04/17/why-we-still-need-americas-nuclear-power-plants-at-least-for-now/>); U.S. Senators from both political parties (Lamar Alexander and Sheldon Whitehouse, To Slow Global Warming, We Need Nuclear Power, The New York Times, Dec. 21, 2016); and many other policymakers and scientists recognize that nuclear power must be part of our energy future, at least for the next decade or more.

In fact, a 2013 report in Scientific American concluded that nuclear power must be part of our response to global climate change, stating:

"U.S. reactors have also been staving off another global challenge: climate change. The low-carbon electricity produced by such reactors provides 20 percent of the nation's power and, by the estimates of climate scientist James Hansen of Columbia University, avoided 64 billion metric tons of greenhouse gas pollution. They also avoided spewing soot and other air pollution like coal-fired power plants do and thus have saved some 1.8 million lives.

"And that's why Hansen, among others, such as former Secretary of Energy Steven Chu, thinks that nuclear power is a key energy technology to fend off catastrophic climate change.

...

"Indeed, he has evidence: the speediest drop in greenhouse gas pollution on record occurred in France in the 1970s and '80s, when that country transitioned from burning fossil fuels to nuclear fission for electricity, lowering its greenhouse emissions by roughly 2 percent per year. The world needs to drop its global warming pollution by 6 percent annually to avoid "dangerous" climate change in the estimation of Hansen and his co-authors in a recent paper in PLoS One. "On a global scale, it's hard to see how we could conceivably accomplish this without nuclear," added economist and co-author Jeffrey Sachs, director of the Earth Institute at Columbia University, where Hansen works."

(How Nuclear Power Can Stop Global Warming, Scientific American, Dec. 12, 2013, <https://www.scientificamerican.com/article/how-nuclear-power-can-stop-global-warming/>)

As you know, once a nuclear power plant closes, it is extremely difficult if not impossible to reopen it. Operating a plant requires hundreds of highly trained people. That talent pool will not be available years after a plant closes. Further, equipment within the plant will deteriorate if it is not operated and maintained. As a result, many climate scientists, environmental advocates, and energy-industry experts believe that keeping our existing nuclear plants in operation is part of a "no regrets" strategy for combating climate change.

Simply stated, as a matter of national and global security it makes no sense to shut down a zero-emissions plant 15 or 20 years before the end of its useful life. At a minimum, nuclear plants like TMI 1 should continue to operate until they can be replaced by zero-emitting alternatives. Today, and for the foreseeable future, zero-emitting options simply do not exist on the scale needed to replace even one nuclear plant like TMI (at more than 800 MW), let alone the nation's entire fleet of nuclear power plants.

As a practical matter, if TMI 1 and other nuclear plants are retired prematurely, they will be replaced by power plants fueled by natural gas. For example, according to the Energy Information Administration, there are just two new utility-scale wind projects planned for Pennsylvania, totaling 170 MW (EIA, Electric Power Monthly, Table 6.5 Planned U.S. Electric Generating Unit Additions (Mar. 23, 2018)) -- or only about 1/4 of the capacity that will be lost if TMI 1 closes prematurely. This will result in increased emissions of carbon dioxide, methane, and other greenhouse gases from new natural gas plants that are likely to exacerbate concerns with climate change.

Section 202(c) of the Federal Power Act authorizes the Federal Energy Regulatory Commission to issue an emergency order keeping certain power plants in operation "whenever the Commission determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy or of fuel or water for generating facilities, *or other causes*". 16 U.S.C. § 824a(c)(1) (emphasis added). We submit to you that keeping zero-emissions nuclear power plants in operation in order to avoid further harm to our climate, is just such an emergency for "other cause" that is referred to in the statute.

Thank you for your consideration.

***John H Levengood***

***President-IBEW Local 777***

(b) (6)

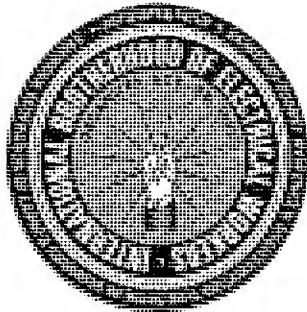
**Troy, Angela (CONTR)**

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**From:** Brian Kube <briankube@ibew1289.org>  
**Sent:** Friday, April 13, 2018 12:34 PM  
**To:** AskOE  
**Subject:** Comments from IBEW Local 1289  
**Attachments:** FERC letter from President Kube.docx; 2017 FERC Docket Grid Resiliency Pricing Rule.docx

To The U.S. Department of Energy,  
As President of IBEW, Local 1289, I urge you to issue an emergency order pursuant to Federal Power Act Section 202(c).  
Our workers and energy grid depend on coal and nuclear plants.  
I have attached my previous correspondence asking the government to take action in this matter to support our generation plants.

Brian Kube  
President  
IBEW Local 1289



## **LOCAL UNION 1289**

**P.O. BOX 1690 WALL, NJ 07719**

Dear Editor,

For years, the federal government has systematically attempted to dismantle a major sector of the American economy at the expense of workers and good-paying jobs. Through massive regulations placed on nuclear power and coal-fired energy, Washington has decimated an industry that would otherwise be an economic pillar for communities in New Jersey and throughout the United States.

Nuclear and coal power represent America's only two baseload energy sources. They are defined by their resiliency – ample supply, stable prices, and reliable methods of delivery. Until recently, baseload sources provided the bulk of the fuel that powers our country's electrical grid. Now, nuclear and coal-fired power plants are shutting down at an alarming rate and will continue to do so, taking more and more jobs with them, unless the government acts quickly to reverse the damage.

The Department of Energy (DOE) has proposed to do just that. If approved, a new rule would lead energy markets to properly value resilient fuels like nuclear power and coal by allowing baseload power plants to recover costs. By doing so, plants slated for retirement would be able to keep their doors open.

Before it can take effect, the new rule must be approved by the Federal Energy Regulatory Commission (FERC). Unfortunately, some have balked at the opportunity to support reliable American energy and save thousands of American jobs.

FERC needs to act quickly to approve the DOE rule and allow resilient fuels to reach their potential as a stable source of power and a major economic driver for New Jersey and the country. Our workers, and our energy grid, depend on it.

Brian Kube  
President  
International Brotherhood of Electrical Workers, Local 1289

October 13, 2017

Federal Energy Regulatory Commission  
Secretary of the Commission  
888 First Street, NE  
Washington, DC 20426

Re: Grid Resiliency Pricing Rule  
FERC Docket No. RM18-1-000

COMMENTS OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL  
WORKERS, LOCAL UNION 1289 IN SUPPORT OF THE PROPOSED RESILIENCY RULE

On September 28, 2017, the Department of Energy (“DOE”) issued the “Grid Resiliency Pricing Rule” (the “Proposal”) directing the Federal Energy Regulatory Commission (“FERC”) to adopt a rule requiring operators of organized markets to “ensure that certain reliability and resiliency attributes of electric generation sources are fully valued.” Such a rule, as contemplated by the regulatory language of the Proposal, will ensure that existing nuclear and coal-fired electric generating stations in New Jersey will be compensated appropriately and fully for their costs of operation and will avoid premature retirement. Adoption of that rule will thus sustain the longterm viability of critical power plants, preserve and create jobs, maintain electric reliability, and provide substantial economic benefits to the many hard-working Americans living throughout the region.

IBEW Local 1289 strongly supports the Proposal and shares the Secretary’s urgency that FERC act promptly to direct operators of organized markets to issue the requested rule. FERC has the ability to act, and must act, without undue delay to avoid premature closure of crucial power plants and our members’ loss of critical economic and reliability benefits. FERC has thoroughly examined how electric markets function and how those markets affect the continued operation of crucial power plants needed for reliability for some time. FERC has the requisite basis to act now.

There is no time for delay. In addition to acting promptly, FERC should also direct organized market operators to issue a comprehensive and enduring set of rules, based on the regulatory language of the Proposal, for the proper compensation of critical power plants. Protracted proceedings undertaken by organized market operators that fail to develop fair, compensatory and transparent rules will only engender market uncertainty and delay in providing sufficient compensation to these facilities, thereby jeopardizing the operation of the very plants that the DOE seeks to maintain in operation.

#### I. COMMUNICATIONS

All communications, correspondence, and documents related to this proceeding should be directed to the following person:

Brian Kube  
President & Business Mgr. IBEW  
Local 1289  
PO Box 1690, Wall, NJ, 07719  
732-918-9559  
[BrianKube@ibew1289.org](mailto:BrianKube@ibew1289.org)

#### II. DESCRIPTION OF IBEW LOCAL 1289

IBEW Local 1289 is a progressive labor organization that represents individuals in the Utility, and Generation industries.

#### III. DESCRIPTION OF IBEW LOCAL 1289'S INTEREST IN PROCEEDING

IBEW Local 1289 is a party to a collective bargaining agreements with the owners of baseload coal and nuclear power plants located in Ohio, Pennsylvania and New Jersey. As a result, the wages, terms and conditions of employment of its members may be directly affected by the actions taken by the FERC and operators of organized markets in this proceeding. Thus, IBEW Local 1289

members have a direct and substantial interest in this proceeding. As well, the unique perspective of IBEW Local 1289 and its members will only serve to enhance the record in this proceeding.

#### IV. COMMENTS

The communities where struggling baseload coal and nuclear power plants are located are dependent on the jobs and economic development opportunities the power plants provide. The recent decline in Ohio, Pennsylvania and New Jersey's electric power industry, for example, has led to reductions in operations and capital improvement expenditures at numerous power production and manufacturing facilities across these states. This has led to extreme hardship for the thousands of union workers employed in this industry as well as their families.

It is imperative that baseload coal and nuclear plants continue to operate in light of these dire circumstances. Baseload coal and nuclear plants in these 3 states provide thousands of MWs of reliable power, and provide union jobs and economic opportunities to IBEW Local 1289 members. IBEW Local 1289 has approximately 1400 members working in both utility and generating occupations in New Jersey, specifically the Oyster Creek nuclear plant and NRG generating operations. In addition to direct labor in the generation sector, the maintenance and capital improvement work at these plants supports the local economy by creating thousands of well-paying union jobs for contractors. These plants also contribute millions each year in state and local tax revenues that support local schools, police and fire departments and other vital public services. The loss of jobs, tax revenue, and the ripple effect of such losses throughout the local economy, will have a severely detrimental impact on the region.

The issuance of a rule preserving the continued operation of resilient baseload coal and nuclear power plants will maintain a reliable supply of electricity for the region's energy-intensive economy in two ways. First, the preservation of certain plants will avoid the need to replace lost

generation with imports and the associated construction of infrastructure to facilitate such importation. Preserving baseload coal and nuclear power plants will keep these needed, reliable facilities running close to home without the need to depend on distant resources, particularly during catastrophic events like severe storms, to fulfill our region's dynamic need for reliable electricity.

Second, premature plant closures will deplete the stable of highly skilled (and specifically trained and experienced) employees, many of whom have lived in the region for several years and who take great pride in their work. With a depletion of this skilled and experienced group of workers, and the possible replacement of these workers with more distant and perhaps less-skilled individuals, we will see a direct and adverse impact on our ability to maintain the generation facilities that continue to operate and, as important, our ability to respond promptly to severe contingencies affecting the operation of these remaining plants in operation. In short, allowing baseload coal and nuclear power plants to close prematurely will have an adverse impact on the reliability of the region's electricity supply and on the reliable operation of the regional electricity system.

Rates for the sale of electricity that are inadequate to sustain the operation of base load generation facilities that provide reliability and resiliency support cannot be considered to be just and reasonable. Because of the loss of jobs, the significant reduction in payments to local governments, and the decline in electricity resource and grid reliability that would result from deactivation of the nuclear and coal-fired generating facilities in Ohio, it is essential that the FERC adopt a rule, such as that proposed by DOE, which will ensure that such generating facilities are fully compensated for their costs and will remain in operation.

In order to mitigate the risk that such generating units may be deactivated prematurely, IBEW Local 1289 strongly urges FERC to adopt the rule proposed by the DOE as promptly and

comprehensively as possible. FERC has a sufficient record to act that will be further bolstered by the comments considered in this proceeding. FERC has thoroughly considered the impact of electric markets on the sustained operation of at-risk power plants and, as noted by the Secretary of the DOE, the time to act is now given the severe impacts to system reliability and resilience, and national security, attendant to the premature closure of crucial power plants. Any protracted delay in creating fully compensatory market rules will only exacerbate the problem of pre-mature closures.

In acting promptly, FERC should also direct the organized market operators to issue a rule that is not only compensatory (and based on the regulatory language of the Proposal) but comprehensive and enduring. The rules to be issued by operators of organized markets should be fair and transparent, and should ensure that critical power plants can continue to operate for the long-term and without the prospect of repeated re-examination and adjustment to their market compensation. The uncertainty that less than comprehensive and enduring market rules will engender will defeat the very purpose of preserving the extended operation of these much-needed power plants.

Respectfully submitted,

Brian Kube  
President & Business Manager  
IBEW Local 1289

UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY

Request for Emergency Order Pursuant :  
To Federal Power Act Section 20(c) by : DOE Dkt. No. \_\_\_\_\_  
FirstEnergy Solutions Corp. :  
:

MOTION OF THE ILLINOIS INDUSTRIAL  
ENERGY CONSUMERS TO INTERVENE

The Illinois Industrial Energy Consumers ("IIEC"), by and through their counsel, hereby move to intervene in the above-captioned proceeding and protest the March 29, 2018 Request for Emergency Order Pursuant to Federal Power Act Section 202(c) by FirstEnergy Solutions Corp. ("FES"), pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214.

**I. PROCEDURAL BACKGROUND**

On March 29, 2018, FES issued a letter ("Request") to the Honorable James Richard Perry, Secretary of Energy, requesting that the Secretary use emergency authority under Section 202(c) of the Federal Power Act to find that an emergency condition exists in the PJM Interconnection, L.L.C. ("PJM") territory requiring immediate intervention. Specifically, FES requests that the Secretary (a) order "certain existing nuclear and coal-fired generators . . . to enter into contracts" with PJM to generate and transmit energy, capacity and ancillary services to "maintain the stability of the electric grid" and (b) order PJM to "promptly compensate at-risk merchant nuclear and coal-fired power plants for the full benefits they provide" to energy markets and the public. FES served the Request on over 100 owners of generation, transmission or distribution assets, state public utility commissions, and others.

## II. MOTION TO INTERVENE

IIEC is an ad hoc association of large consumers of electricity that have facilities located in the Illinois portion of the PJM region. IIEC members are authorized under Illinois law to purchase electric energy and capacity from suppliers other than Illinois public utilities and are participants in the regional energy and capacity markets. IIEC members include large manufacturers in the steel, cement, paper, chemical, pharmaceutical, consumer products and other industries, and large institutional consumers of electricity. If the Request is granted, cost responsibility for payments made pursuant to the Emergency Order may be recovered from consumers and market participants throughout the PJM region, including IIEC member companies. IIEC strongly opposes the Request and reserves the right to supplement this preliminary pleading to explain, in detail, why the request is unjustified and unlawful, and should not be granted.

IIEC moves for intervention under Rule 214 of the Commission's Rules of Practice and Procedure.<sup>1</sup> Consistent with Rule 214(b)(2), IIEC has a significant and direct interest in the outcome of

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<sup>1</sup> Federal Power Act Section 202(c) and the Department indicate that the Federal Power Act and the Commission's Rules of Practice and Procedure should be used for potential guidance in Emergency Order proceedings. Guidance published on the Department's website points to the Commission's Rules, where DOE regulations at 10 C.F.R. § 205.370, et seq., are silent. Additionally, the Department has taken the position that the procedure for the judicial review of emergency orders under Section 202(c) of the Federal Power Act must be secured through Section 313 of that Act, 16 U.S.C. § 8251. See, e.g., Order No. 202-05-03, *District of Columbia Public Service Commission*, Docket No. EO-05-01 (December 20, 2005) at 11-13. The plain language of Section 202(c)(5) of the Federal Power Act, enacted in 2016, reinforces this principle. Where, as here, a proceeding exists under Chapter 12 of the Federal Power Act, the Commission's Rules of Practice and Procedure apply. See 16 U.S. Code § 825g(b) (FPA § 308) ("All hearings, investigations, and proceedings, under this chapter shall be governed by rules of practice and procedure to be adopted by the Commission.").

this proceeding. Further, as an organization representing many of the largest electric consumers in the Illinois portion of PJM, IIEC's participation is in the public interest.

### **III. SERVICE OF DOCUMENTS**

The following persons are designated by IIEC to receive service and communications on its behalf with regard to this proceeding:

Eric Robertson  
Ryan Robertson  
Lueders, Robertson & Konzen, LLC  
1939 Delmar Avenue  
P. O. Box 735  
Granite City, IL 62040  
618-876-8500 (Office)  
618-876-4534 (Fax)  
[erobertson@lrlaw.com](mailto:erobertson@lrlaw.com)  
[ryrobertson@lrlaw.com](mailto:ryrobertson@lrlaw.com)

### **IV. STATEMENT OF OPPOSITION**

Rule 214(b)(1) requires the movant to state its preliminary position. IIEC opposes the relief sought by FES. IIEC is participating with other parties to this proceeding, in developing a comprehensive rebuttal to FES' Request, and plans to submit that rebuttal to the Department.

IIEC supports the request that was filed Friday, March 30, 2018 by the Electric Power Supply Association and other organizations requesting a 60-day comment period.

### **V. CONCLUSION**

For the reasons set forth above, IIEC respectfully requests that the Department permit IIEC to intervene in this proceeding and, if the Department does not reject the FES Request outright, provide all interested parties with 60 days to file comments on the Request.

DATED this 13th day of April, 2018.

Respectfully submitted,

LUEDERS, ROBERTSON & KONZEN, LLC

BY: /s/ Eric Robertson

Eric Robertson  
Ryan Robertson  
Lueders, Robertson & Konzen, LLC  
1939 Delmar Avenue  
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618-876-8500  
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[erobertson@lrklaw.com](mailto:erobertson@lrklaw.com)  
[ryrobertson@lrklaw.com](mailto:ryrobertson@lrklaw.com)

Counsel to the Illinois Industrial Energy Consumers

90247.1

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served, via first-class mail, electronic transmission, or hand-delivery, the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Granite City, Illinois, this 13<sup>th</sup> day of April, 2018.

BY: /s/ Eric Robertson  
Eric Robertson  
Lueders, Robertson & Konzen, LLC  
1939 Delmar Avenue  
P. O. Box 735  
Granite City, IL 62040  
618-876-8500  
618-876-4534  
erobertson@lrklaw.com

**90247.2**

**From:** Reuter, Jack B.  
**To:** AskOF  
**Subject:** Comments on FES request for 202(c) request  
**Date:** Friday, April 13, 2018 9:33:58 AM

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There is no formal request for comments, so this is not a formal comment.  
I do work at Davis Besse. I am also part of the public. I live in the north and it get cold here.  
The price of electricity is controlled by the price of gas. The price of gas spikes when it is cold. This was very apparent this last winter.  
Gas plants do not have guarantee to get gas. Gas plants have shut down, when the price of gas gets too high. Just look at the facts from last winter.  
People get guarantee gas; however, most new furnaces do not run without electricity.  
People will freeze to death.  
When there are brown and black outs.  
People will freeze to death.  
You can keep lots of people from freezing to death.  
If these plants do not get the, cost for electricity, they need to operate, I will be buying a generator that runs on propane.  
I will not trust the electric grid. The (gas) wholesalers do not appear to have the public interest as any priority. They appear to just be trying to make the most money.  
Can you grantee that there will be electricity when people need it most?  
Can you grantee that there will not be brown out and black outs, when people need it most?  
Can you grantee that people will not freeze to death because of a lack of electricity?  
Do the right thing and protect the public from freezing.

Jack B Reuter  
Radioactive Waste Supervisor at Davis Besse  
Phone 419-321-7425  
Cell (b) (6)  
Email [jbreuter@firstenergycorp.com](mailto:jbreuter@firstenergycorp.com)

Life is a banquet but it is sad that so many people decide to go hungry!  
Make your day great by enjoying the happiness of the day!  
What you do not know cannot help you because only knowing the truth will set you free!

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**The information contained in this message is intended only for the personal and confidential use of the recipient(s) named above. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately, and delete the original message.**

**From:** [Lotto, Adrienne](#)  
**To:** [Bittner, Kathy \(CONTR\)](#)  
**Subject:** FW: PJM Interconnection, L.L.C. Motion to Intervene and Limited Response to the March 29, 2018 Request For Emergency Order Pursuant To Federal Power Act Section 202(c) By FirstEnergy Solutions Corp.  
**Date:** Saturday, April 14, 2018 12:00:19 AM  
**Attachments:** [MOTION TO INTERVENE AND LIMITED RESPONSE.PDF](#)

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**From:** Hoffinan, Patricia <[Pat.Hoffman@hq.doe.gov](mailto:Pat.Hoffman@hq.doe.gov)>  
**Date:** Friday, Apr 13, 2018, 6:54 PM  
**To:** Walker, Bruce <[Bruce.Walker@hq.doe.gov](mailto:Bruce.Walker@hq.doe.gov)>, Lotto, Adrienne <[Adrienne.Lotto@hq.doe.gov](mailto:Adrienne.Lotto@hq.doe.gov)>  
**Subject:** FW: PJM Interconnection, L.L.C. Motion to Intervene and Limited Response to the March 29, 2018 Request For Emergency Order Pursuant To Federal Power Act Section 202(c) By FirstEnergy Solutions Corp.

Fyi

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**From:** Pincus, Steven <[Steven.Pincus@pjm.com](mailto:Steven.Pincus@pjm.com)>  
**Date:** Friday, Apr 13, 2018, 3:24 PM  
**To:** AskOE <[AskOE@hq.doe.gov](mailto:AskOE@hq.doe.gov)>  
**Cc:** Secretary Perry <[The.Secretary@hq.doe.gov](mailto:The.Secretary@hq.doe.gov)>, Hoffman, Patricia <[Pat.Hoffman@hq.doe.gov](mailto:Pat.Hoffman@hq.doe.gov)>, Jereza, Catherine <[Catherine.Jereza@Hq.Doe.Gov](mailto:Catherine.Jereza@Hq.Doe.Gov)>, Batra, Rakesh <[Rakesh.Batra@Hq.Doe.Gov](mailto:Rakesh.Batra@Hq.Doe.Gov)>, Konieczny, Katherine <[Katherine.Konieczny@Hq.Doe.Gov](mailto:Katherine.Konieczny@Hq.Doe.Gov)>, Glazer, Craig <[Craig.Glazer@pjm.com](mailto:Craig.Glazer@pjm.com)>, Duane, Vincent P. <[Vincent.Duane@pjm.com](mailto:Vincent.Duane@pjm.com)>, Tribulski, Jennifer <[Jennifer.Tribulski@pjm.com](mailto:Jennifer.Tribulski@pjm.com)>, Bryson, Mike E. <[Michael.Bryson@pjm.com](mailto:Michael.Bryson@pjm.com)>, Burdis, Timothy <[Timothy.Burdis@pjm.com](mailto:Timothy.Burdis@pjm.com)>, Buehler, Susan E. <[Michael.Bryson@pjm.com](mailto:Michael.Bryson@pjm.com)>, Dotter, Ray E. <[Ray.Dotter@pjm.com](mailto:Ray.Dotter@pjm.com)>, O'Hara, Chris <[Susan.Buehler@pjm.com](mailto:Susan.Buehler@pjm.com)>, Souder, David W. <[David.Souder@pjm.com](mailto:David.Souder@pjm.com)>, Shields, Jeffrey, P <[Jeffrey.Shields@pjm.com](mailto:Jeffrey.Shields@pjm.com)>  
**Subject:** PJM Interconnection, L.L.C. Motion to Intervene and Limited Response to the March 29, 2018 Request For Emergency Order Pursuant To Federal Power Act Section 202(c) By FirstEnergy Solutions Corp.

Dear Secretary Perry:

PJM Interconnection, L.L.C. respectfully submits for filing the attached Motion to Intervene and Limited Response to the March 29, 2018 Request for Emergency Order Pursuant to Federal Power Act Section 202(c) by FirstEnergy Solutions Corp.

Steven R. Pincus  
Associate General Counsel, Office of General Counsel

(610) 666-4370 | C: (b) (6) | [Steven.Pincus@pjm.com](mailto:Steven.Pincus@pjm.com)  
PJM Interconnection | 2750 Monroe Blvd. | Audubon, PA 19403

UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY

Request For Emergency Order Pursuant )  
To Federal Power Act Section 202(c) By ) Docket No. \_\_\_\_\_  
FirstEnergy Solutions Corp. )

**MOTION TO INTERVENE AND LIMITED RESPONSE  
OF PJM INTERCONNECTION, L.L.C.**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission's ("FERC") Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.214, and the United States Department of Energy's ("the Department") regulations, 10 C.F.R. § 205.383,<sup>1</sup> PJM Interconnection, L.L.C. ("PJM") respectfully files this Motion to Intervene and Limited Response to the March 29, 2018 Request (the "Request") for Emergency Order Pursuant to Federal Power Act ("FPA") Section 202(c), 16 U.S.C. § 824a, submitted by FirstEnergy Solutions Corporation ("FES") in this matter.

**I. LIMITED RESPONSE**

In its Request to Energy Secretary James Richard Perry (the "Secretary"), FES asks that the Secretary invoke emergency authority under Section 202(c) of the FPA to find that an emergency condition exists in the PJM region that requires immediate action by the Secretary. PJM's limited response, addresses two points to help clarify the record and contribute the Secretary's understanding of the issues.

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<sup>1</sup> Federal Power Act Section 202(c) and the Department's policy and regulations provide that FERC's Rules of Practice and Procedure should be used for procedural guidance in Emergency Order proceedings. Guidance published on the Department's website points to the Commission's rules in situations where the Department's regulations at 10 C.F.R. § 205.370, *et. seq.*, are silent. See, e.g., DOE Answer to Procedural Questions Concerning Rehearing of DOE Order, *District of Columbia Public Service Commission*, Docket No. E0-05-01 (December 30, 2005) at 2.

First, for the reasons stated in a letter dated March 30, 2018, to the Secretary from PJM's Senior Vice President, General Counsel, Law, Compliance & External Affairs, Vincent P. Duane (attached hereto as Attachment I), FES has not objectively established that an emergency exists within the meaning of Section 202(c) of the FPA or that there is an immediate threat to system reliability.

Second, FES relies on a report issued by the National Energy Technology Laboratories ("NETL") on March 13, 2018,<sup>2</sup> to support the Request. PJM respectfully submits herewith PJM's perspective and its response to the NETL Report ("PJM Report" attached hereto as Attachment II).<sup>3</sup> The PJM Report will be posted publicly on PJM's website and is submitted for consideration by the Secretary in light of the analysis and conclusions undertaken by the NETL. The PJM Report summarizes PJM's assessment of system operations during the 2017/2018 cold snap period in response to the conclusions reached by the NETL in its report. The PJM Report finds that performance during the 2017/2018 cold snap is "evidence that the grid in the PJM service area remains strong, diverse and reliable."<sup>4</sup>

## II. MOTION TO INTERVENE

PJM is a FERC established independent system operator and Regional Transmission Organization.<sup>5</sup> PJM is a transmission provider under and the administrator of the PJM Open Access Transmission Tariff, operates the PJM markets and conducts the day-to-day operations of the bulk power system in the PJM region.

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<sup>2</sup> NAT'L ENERGY TECH. LAB., RELIABILITY, RESILIENCE AND THE ONCOMING WAVE OF RETIRING BASELOAD UNITS VOLUME I: THE CRITICAL ROLE OF THERMAL UNITS DURING EXTREME WEATHER EVENTS 12 (Mar. 13, 2018) ("NETL Report").

<sup>3</sup> *Perspective and Response of PJM Interconnection to National Energy Technology Laboratories Report Issued March 13, 2018*.

<sup>4</sup> PJM Report page 10.

<sup>5</sup> *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,252 (1997), *reh'g denied*, 92 FERC ¶ 61,282 (2000); *PJM Interconnection, L.L.C.*, 101 FERC ¶ 61,345 (2002).

Based on the foregoing PJM has an independent interest in this proceeding that no other party can represent adequately.

### **III. CORRESPONDENCE AND COMMUNICATION**

The following individuals are designated for inclusion on the official service list in this proceeding and for receipt of any communication regarding this matter:

Craig Glazer  
Vice President–Federal Government Policy  
PJM Interconnection, L.L.C.  
1200 G Street, N.W, Suite 600  
Washington, D.C. 20005  
(b) (6)  
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Steven R. Pincus  
Associate General Counsel  
PJM Interconnection, L.L.C.  
2750 Monroe Blvd.  
Audubon, PA 19403  
(610) 666-4438  
steven.pincus@pjm.com

### **IV. CONCLUSION**

For the reasons stated above, PJM respectfully requests that the Secretary grant this Motion to Intervene, accept and consider the limited response provided herein and afford PJM all the rights of a party to this proceeding.

Respectfully submitted,

*/s/ Steven R Pincus*

Craig Glazer  
VP, Federal Government Policy  
PJM Interconnection, L.L.C.  
Suite 600  
1200 G Street, N.W.  
Washington, DC 20005  
(b) (6) (phone)

Steven R. Pincus  
Associate General Counsel  
PJM Interconnection, L.L.C.  
2750 Monroe Boulevard  
Audubon, PA 19403  
(610) 666-4370 (phone)

Dated: April 13, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that I this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Audubon, PA this 13<sup>th</sup> day of April, 2018

/s/ Steven R. Pincus  
Steven R. Pincus  
Associate General Counsel  
PJM Interconnection, L.L.C.  
2750 Monroe Blvd.  
Audubon, PA 19403  
(610) 666-4370  
[steven.pincus@pjm.com](mailto:steven.pincus@pjm.com)

# Attachment 1

Letter dated March 30, 2018,  
to the Secretary  
from PJM's Senior Vice President,  
General Counsel, Law, Compliance &  
External Affairs, Vincent P. Duane



2750 Monroe Boulevard  
Audubon, PA 19403-2497

Vincent P. Duane  
Sr. VP General Counsel, Law, Compliance  
& External Affairs  
610.666.4367  
610.666.4281 FAX  
[Vincent.duane@pjm.com](mailto:Vincent.duane@pjm.com)

March 30, 2018

The Honorable James Richard Perry  
Secretary of Energy  
United States Department of Energy  
1000 Independence Avenue, S.W.  
Washington, DC 20585

Re: FirstEnergy Solutions' Request for Emergency Relief under Section 202 of the Federal Power Act

Dear Secretary Perry:

PJM Interconnection, LLC (PJM) respectfully seeks to submit this response to the above-referenced request filed by FirstEnergy Solutions and affiliates (FES) on March 29, 2018. While the PJM system presently is reliable by all measures, PJM will refrain, at this time, from responding to FES' assertion that an "emergency condition" will arise should certain FES nuclear plants and potentially certain FES coal plants retire in upcoming years as announced or threatened by the company.<sup>1</sup>

PJM will not use this opportunity to express agreement or disagreement with several major points of argument advanced by FES; nor will we correct at this time several misstated facts presented by FES. Instead, PJM simply points out to the Secretary two very obvious and objective facts that relieve the Department from the need to take precipitous, immediate action to address FES' request.

First, whether FES' actions create a reliability concern that may threaten the stable and reliable operation of the grid, much less constitute an emergency within the meaning of Section 202(c) of the Federal Power Act, is a question that will be answered by a proscribed, detailed and regularly employed process found in Part V of the PJM Tariff. Consistent with the PJM Tariff, over the next 30 days, PJM will undertake a thorough analysis of its system to determine whether the announced retirements would present systemic adequacy issues or any local reliability issues, such as insufficient voltage support. Should any such finding result, the PJM Tariff provides an additional 60 days to work with FES and a range of tools available, including ordering transmission system upgrades and, if necessary, offering full cost of service compensation under Part V of the PJM Tariff to induce assets to remain temporarily on-line. Ultimately, PJM could also join FES in its instant request should other remedial options prove insufficient.

Second, PJM can state without reservation there is no immediate threat to system reliability. Indeed, the FES units that announced their expected retirement earlier this week, by their own disclosures, will remain operational in most cases until through May 2021. Moreover, these announcements are not binding – FES

<sup>1</sup> Curiously, the request purports to seek relief for the entire FES merchant fleet - and somehow on behalf of others - relief for *all* other coal and nuclear units in PJM, totaling over 80 generation units. PJM will evaluate the question of impaired reliability or an "emergency condition" based on actual facts – announced retirements – not on the company's general dissatisfaction with the PJM markets or its competitive position therein. Nor will PJM evaluate the impact of closure of other companies' plants unless or until owners of such plants raise the matter with PJM.

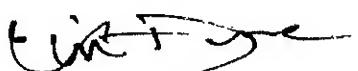
{W0153751.1}

can elect to rescind this notice, or should assets be sold, a subsequent purchaser likewise may decide to continue to operate the units. But even assuming these units do in fact close as of the dates announced, PJM, FERC, and the Department of Energy will have ample time before then to take measures, which at the extreme might include the kind of relief sought in the instant request.

PJM therefore respectfully requests that the Secretary allow PJM's FERC-accepted process to unfold in an orderly manner and refrain from taking unnecessary, extraordinary and precedential immediate action as sought by FES. PJM will commit to sharing publicly (to the maximum extent possible), and in any event to the Department of Energy, our findings resulting from our 30-day process for evaluating the system implications of FES' announced retirements.

Thank you for considering PJM's perspective and suggestions.

Sincerely,



Vincent P. Duane

cc: Mark Menezes, DOE  
Bruce Walker, DOE  
Sean Cunningham, DOE  
Patricia Hoffman, DOE  
Catherine Jereza, DOE

# Attachment 2

Perspective and  
Response of PJM  
Interconnection to  
National Energy

Technology

Laboratories Report

Issued March 13, 2018

Perspective and Response of PJM Interconnection to  
National Energy Technology Laboratories Report Issued March 13, 2016





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Conclusion and Next Steps.....	9

## Executive Summary

In March 2018, the U.S. Department of Energy's National Energy Technology Laboratory (NETL) released a report<sup>1</sup> assessing electric operations in the nation's Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs) during a prolonged cold snap from Dec. 27, 2017–Jan. 7, 2018. In part, the report focuses on operations in the PJM Interconnection service area. PJM appreciates NETL's overall attention to system performance of each of the northeastern RTOs and ISOs during this period. PJM presents this report to review for the public the analysis undertaken by NETL and the conclusions reached.

PJM believes that the NETL report, as it relates to PJM, reaches some sweeping conclusions that are not supported by the specific facts concerning grid operations during Dec. 27, 2017–Jan. 7, 2018. Although the NETL report contains some appropriate analysis and asks valid questions, the report's overall conclusion is incorrect about the reasons for PJM's dispatch of coal units during the cold snap. PJM dispatched coal units because *their costs were lower* during certain hours of the cold snap. Natural gas and nuclear units were not unreliable or otherwise unavailable to serve the increased customer demand, nor would PJM have faced "interconnect-wide blackouts" without the particular generating units dispatched, as the NETL report claimed. For example, in its Executive Summary, the NETL report reaches the following conclusion:

*"In PJM, the largest of the ISOs, coal provided the most resilient form of generation, due to available reserve capacity and on-site fuel availability, far exceeding all other sources (providing three times the incremental generation from natural gas and twelve times that from nuclear units); without available capacity from partially utilized coal units, PJM would have experienced shortfalls leading to interconnect-wide blackouts."*

Executive Summary at p. 1.

PJM agrees that the report underscores the importance of a fuel-secure generation fleet to serve future demands. But in PJM's view, the report erroneously concludes that the relative *economics* of coal and nuclear vs. natural gas during the cold snap, which drove the dispatch of coal units (i.e., that the cost of coal was lower), indicates that the system would have faced "shortfalls leading to interconnect-wide blackouts" during this period. As PJM demonstrated in its own report<sup>2</sup> on system performance during the cold snap, PJM had adequate amounts of resources to supply power – the price of natural gas relative to coal and nuclear during the cold snap drove the dispatch decisions.

During the cold snap, the region experienced an increase in the price of natural gas, which made coal resources (which often did not run under periods of lower natural gas prices) the more economic choice during times of high gas prices. But one cannot extrapolate from these economic facts a conclusion as to future reliability within PJM.

<sup>1</sup> [Reliability, Resilience and the Oncoming Wave of Retiring Baseload Units, Volume I: The Critical Role of Thermal Units During Extreme Weather Events](https://www.netl.doe.gov/energy-analyses/temp/ReliabilityandtheOncomingWaveofRetiringBaseloadUnitsVolume1/TheCriticalRoleofThermalUnits_031318.pdf); NETL; Mar. 13, 2018; [https://www.netl.doe.gov/energy-analyses/temp/ReliabilityandtheOncomingWaveofRetiringBaseloadUnitsVolume1/TheCriticalRoleofThermalUnits\\_031318.pdf](https://www.netl.doe.gov/energy-analyses/temp/ReliabilityandtheOncomingWaveofRetiringBaseloadUnitsVolume1/TheCriticalRoleofThermalUnits_031318.pdf)

<sup>2</sup> [PJM Cold Snap Performance: Dec. 28, 2017 to Jan. 7, 2018](http://www.pjm.com/-/media/library/reports-notices/weather-related/20180226-january-2018-cold-weather-event-report.ashx); PJM Interconnection; Feb. 26, 2018; at p. 32; <http://www.pjm.com/-/media/library/reports-notices/weather-related/20180226-january-2018-cold-weather-event-report.ashx>

PJM acknowledges that fuel security is a topic deserving increased focus. PJM has already taken steps to increase fuel security through many initiatives that have been implemented with approval of the Federal Energy Regulatory Commission (FERC), including its Capacity Performance reforms to its Reliability Pricing Model capacity market. These changes, designed to more clearly define the obligations of capacity resources to be available when called upon (and to secure adequate fuel supplies to do so) with stiff penalties for non-compliance, were a key first step in ensuring fuel security among those resources that PJM counts on to ensure reliability.

PJM is committed to further action to adequately value and price fuel-secure resources. PJM intends to pursue these initiatives in a manner that does not choose one particular fuel type over another. Instead, PJM will rely on a clear definition of attributes, and the adoption of market-based mechanisms to price those attributes, in order to drive competitive and efficient results that ensure the continued supply of reliable electricity to meet the region's needs at the lowest reasonable cost. PJM looks forward to working with its stakeholders, the Department of Energy (DOE) and the FERC on these initiatives.

#### **PJM's View — Key Points:**

- **Defining Resilience:** When using the term "resilience," the NETL report mixes the availability of adequate generation to meet load with the costs of particular resources in a given hour and their impact on economic dispatch. In essence, the NETL report attempts to quantify "resilience" by comparing the dispatched resource mix by fuel type during a mild demand period to the dispatched resource mix by fuel type during the cold snap period. The report then labels the incremental change in resource fuel types supplying electricity during the cold snap period as "resilience," implying resource availability was physically impaired, which led to a shift in dispatch during the cold snap between coal and natural gas.

However, as noted above, the driver of the higher dependence on coal during the cold snap was the economics (i.e., lower cost) of coal vs. natural gas on an hour-by-hour basis.

PJM's dispatch is designed to ensure both reliability of supplies and competitiveness of prices for customers. PJM does this by "stacking" bids of the units bidding to serve customers in a given interval and only dispatching those units needed based on the lowest cost resources available to meet demand. During a number of hours of the cold snap, coal resources were more economic (i.e., less expensive) than natural gas resources.

This is a "good news" story for coal resources from an economic viewpoint, but the fact that additional coal resources were dispatched due to economics is not a basis to conclude that natural gas resources were not available to meet PJM system demands or that without the coal resources during this period the PJM grid would have faced "shortfalls leading to interconnect-wide blackouts."

In fact, during the cold snap, PJM reserves were over 23 percent of peak load demand, and there were few units that were unable to obtain natural gas transportation, even for most units that relied only on interruptible service.

NETL also makes the argument that offline coal, which came online "suddenly" during the cold weather, acted as adaptive resilient generation. 57 percent of coal generation was self-scheduled and 41 percent was scheduled based on economic offers – largely due to the lower cost of coal vs. gas. By the same token, any natural gas units

that were available<sup>3</sup> but not scheduled were counted as offline reserves and, therefore, can also be considered adaptive resilient generation. This is the primary mechanism PJM uses to make reserves available on the system. Those resources that are the most economic (i.e., lowest cost) to provide energy are dispatched to do so, while more expensive resources are held offline and provide reserves. For the peak day of Jan. 5, 28,883 MW of natural gas were available but not scheduled as energy or reserves. These units can also be considered as adaptive reserves using the NETL approach.

- **Emergency Procedures:** PJM's emergency procedures process signals system operators to perform specific actions if system conditions have the potential to deteriorate. Leading up to and during the 2017/2018 cold snap, PJM did not enter into conservative or corrective emergency actions to address capacity or reserve shortages.
- **Forced Outages:** NETL attributes the increase in coal usage to potential issues related to natural gas fuel supply. Generation outages due to fuel supply issues were not prominent. Jan. 5, 2018, hour-ending 1900, the PJM system hit its peak demand during the cold snap period of 137,522 MW. At that time, PJM experienced 2,680 MW of outages due to fuel supply, 2,181 MW of which were related to natural gas supply. This represents a relatively small portion of the total 16,671 MW of all generation was forced offline during that time.
- **Available Capacity and Operating Reserve Margins:** NETL does not identify the level of system reserves available to operators during the cold snap period. The PJM system had 32,645 MW, or 23 percent, of additional capacity available to serve demand during the peak demand of the cold snap period. As illustrated graphically below, PJM's Operating Reserves market, a time-based reliability product for maintaining and dispatching reserves quickly, also maintained sufficient levels throughout the period.

## Emergency Procedures

PJM's Emergency Procedures<sup>4</sup> identify the instructions, rules, procedures and guidelines for the operation of the region's bulk electric system<sup>5</sup>. Under more extreme system conditions, PJM's Emergency Procedures include actions by which PJM would declare capacity or reserve emergencies and subsequent remedial steps.<sup>6</sup> For instance, PJM is able to recall off-system sales of energy from resources committed to serve the PJM region. Leading up to and during the cold snap event, PJM entered into Cold Weather Alerts<sup>7</sup> and High Load Voltage Schedule Warnings and Actions.<sup>8</sup> Neither procedure

<sup>3</sup> Available units are mechanically able to operate but may not be scheduled based on economics. A simple call to those units would get those units operating on the system.

<sup>4</sup> [PJM Manual 13: Emergency Operations; PJM Interconnection; v.65 effective January 1, 2018;](http://www.pjm.com/~/media/documents/manuals/m13.ashx)  
<http://www.pjm.com/~/media/documents/manuals/m13.ashx>

<sup>5</sup> At times of actual or potential emergency conditions, PJM will issue emergency procedure notifications ranging in severity from informational alerts and warnings to critical system actions.

<sup>6</sup> *Id.* Section 2, p. 16

<sup>7</sup> Cold Weather Alerts serve to notify members of higher-than-normal demand, notify asset owners to restore all available transmission and generation equipment, and notify asset owners to defer any maintenance activities planned during the alert period.

represents a capacity or reserve shortage condition. The PJM market did not enter a Performance Assessment Interval. Performance Assessment Intervals are time periods when emergency conditions require capacity committed to serve the PJM market to perform to their committed, prescribed level or suffer significant financial penalty.

## Economic Dispatch

As described above, through economic dispatch, PJM uses the lowest cost set of resources to serve demand at a given interval. During the cold snap, coal and oil resources became more economic than natural gas-fired resources when natural gas prices rose.

The average megawatt contribution by fuel type for the morning (Figure 1) and evening peaks (Figure 2) of Dec. 1, 2017–Jan. 7, 2018 are shown below. The megawatts obtained from natural gas and nuclear capacity remain relatively stable in both periods. Coal and oil generation output increased.

The stable output of nuclear generation is expected because nuclear generation typically operates at its full capability whenever it is available. The increase in output from coal and oil is attributable to the economics of the supply offers into the market. Figure 3 shows the supply offers of available resources. The dashed lines represent coal and gas offers from Dec. 1–26, 2017. The solid lines represent coal and gas offers during the Dec. 27, 2017–Jan. 7, 2018 cold snap period.

While coal offers remained relatively consistent between the two periods — in the \$0–30/MWh range — during mild system conditions, considerable contributions of natural gas are more economic than some coal resources. Progressing to the elevated demand period during the cold snap, the supply curve for gas resources shifts as fuel becomes more expensive, making coal (and oil) resources more economic to operate.

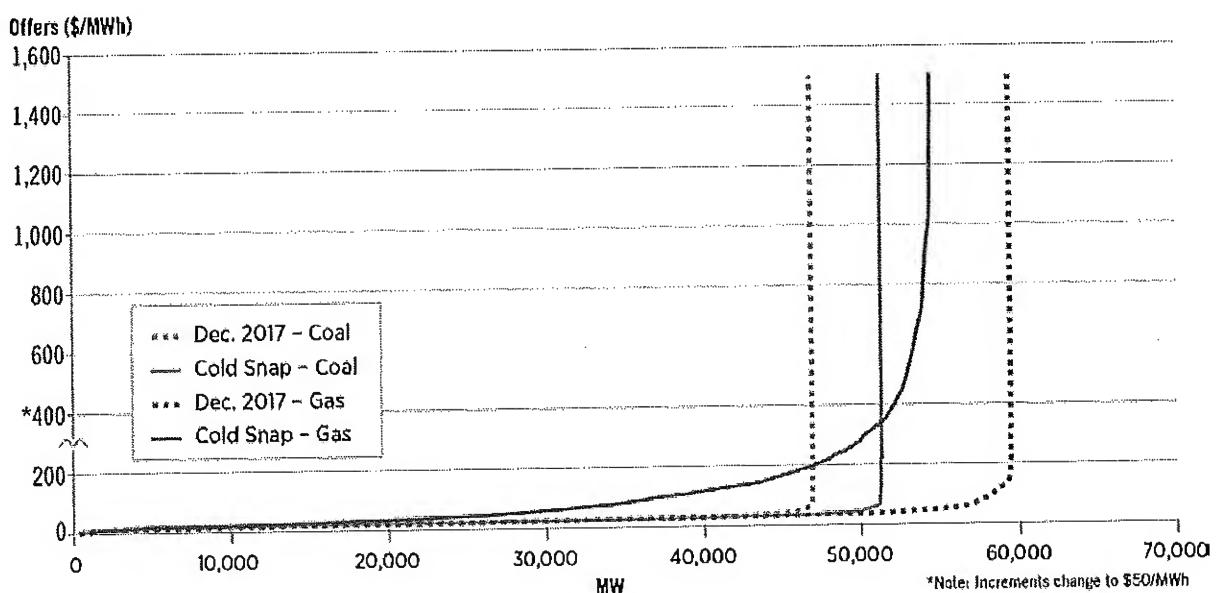
<sup>8</sup> Heavy Load Voltage Schedule Warnings and Actions alert transmission owners to energize all capacitors, remove all reactors and optimize voltage schedules to help maximize the power transfer capability of the system. By taking these steps, PJM ensures the system is positioned in the most resilient manner possible, allowing us to move power from one area to another if there are major generator or transmission failures. These procedures are issued proactively and do not signify any capacity or transmission concerns.

Figure 1. Average Morning Peak Megawatt Output by Fuel Type, Dec. 1, 2017–Jan. 7, 2018

Fuel Type	Morning Peak Period – HE 0900	
	Average for Dec. 1–26, 2017	Average for Dec. 27, 2017–Jan 7, 2018
Coal	32,676	32%
Gas	27,090	27%
Hydro	2,415	2%
Multiple Fuels	90	0%
Nuclear	35,289	35%
Oil	295	0%
Other	61	0%
Other Renewables	641	0%
Solar	87	0%
Storage	-	0%
Wind	3,398	3%

Figure 2. Average Evening Peak Megawatt Output by Fuel Type, Dec. 1, 2017–Jan. 7, 2018

Fuel Type	Evening Peak Period – HE 1900	
	Average for Dec. 1–26, 2017	Average for Dec. 27, 2017–Jan 7, 2018
Coal	34,105	32%
Gas	29,919	28%
Hydro	3,320	3%
Multiple Fuels	100	0%
Nuclear	35,237	33%
Oil	276	0%
Other	37	0%
Other Renewables	638	0%
Solar	3	0%
Storage	-	0%
Wind	3,103	3%

Figure 3. Avg. Incremental Generation Supply Offers by Fuel Type, Dec. 1, 2017–Jan. 7, 2018<sup>9</sup>


## Forced Outages

Figure 4 shows that on Jan. 5, 2018, hour-ending 1900, PJM's peak demand day during the cold snap, PJM experienced a total of 16,671 MW of forced outages for all reasons. Data below shows that overall forced outages during the peak demand hour of the recent cold snap were about half what they were during the 2014 Polar Vortex.

Figure 5 shows that on Jan. 5, 2018, hour-ending 1900, PJM's peak demand day during the cold snap, out of the total forced outage MW PJM experienced 2,680 MW of outages due to fuel supply. 2,181 MW of fuel supply-related outages were due to natural gas supply. This represents less than 2 percent of the total load requirement at the time. During the cold snap period, PJM's highest experienced outages due to fuel supply occurred on Jan. 7, 2018, hour-ending 0900. At this time, 6,418 MW were unavailable to operators, with natural gas making up the majority of fuel type outages in this category. By contrast, forced outages due to fuel supply issues during the 2014 Polar Vortex peaked at roughly 10,000 MW.<sup>10</sup>

<sup>9</sup> 'Dec. 2017' represents the period prior to the cold snap experienced in PJM (Dec. 1 – 26, 2017). 'Cold Snap' represents the period during the cold snap experienced in PJM (Dec. 27, 2017 – Jan. 7, 2018).

<sup>10</sup> Analysis of Operational Events and Market Impacts During the January 2014 Cold Weather Events; PJM Interconnection; May 8, 2014; at pp. 24–25; <http://pjm.com/~media/committees-groups/task-forces/cstf/20140509/20140509-item-02-cold-weather-report.ashx>

Figure 4. Forced Outages Due to Fuel Supply Issue by Fuel Type

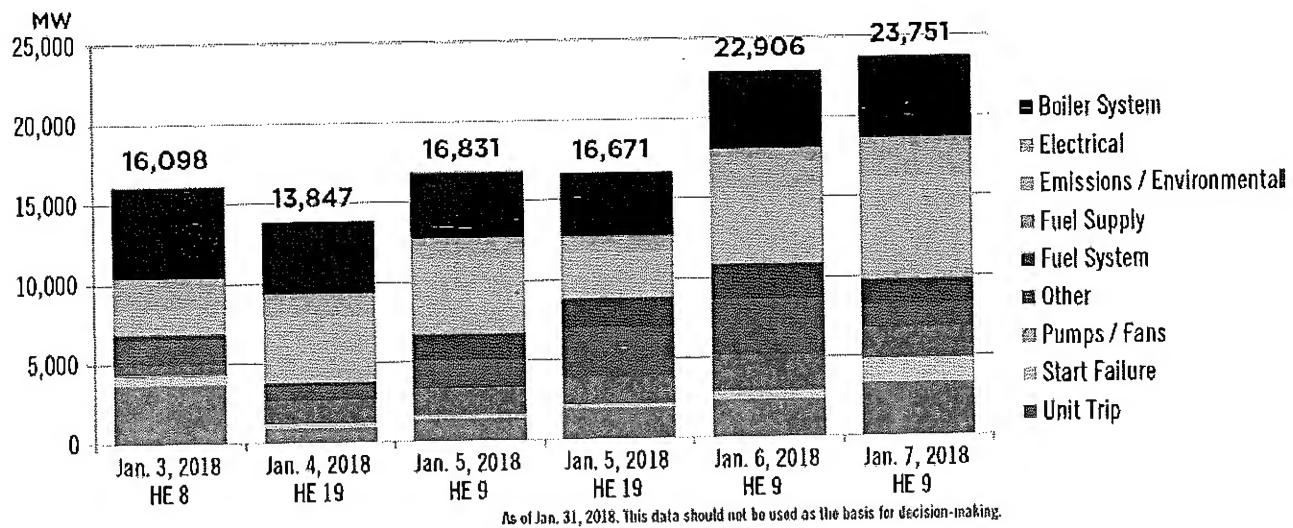
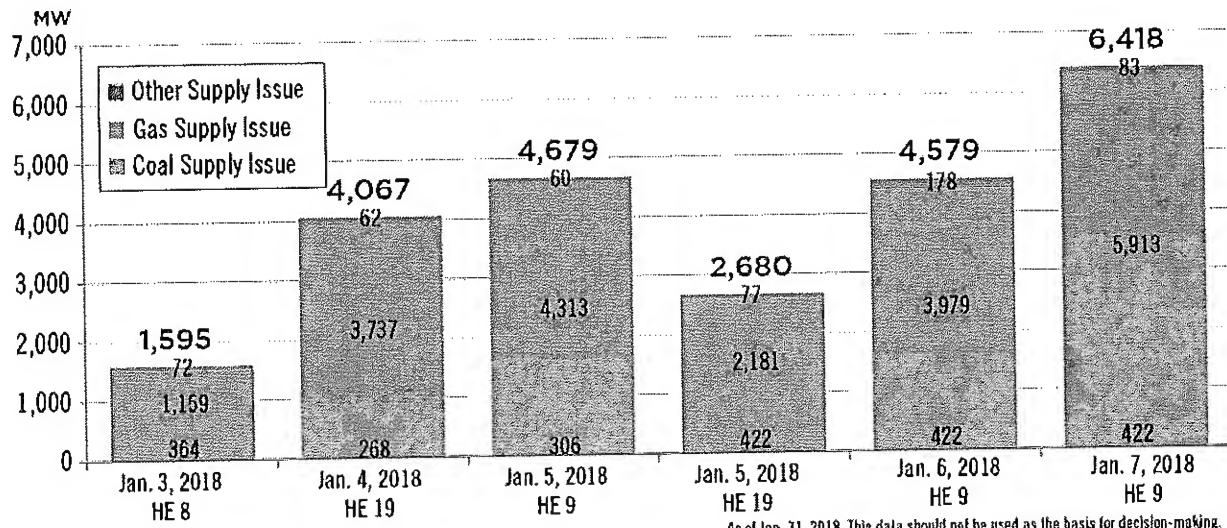


Figure 5. Forced Outage Causes



## Available Capacity and Operating Reserve Margins

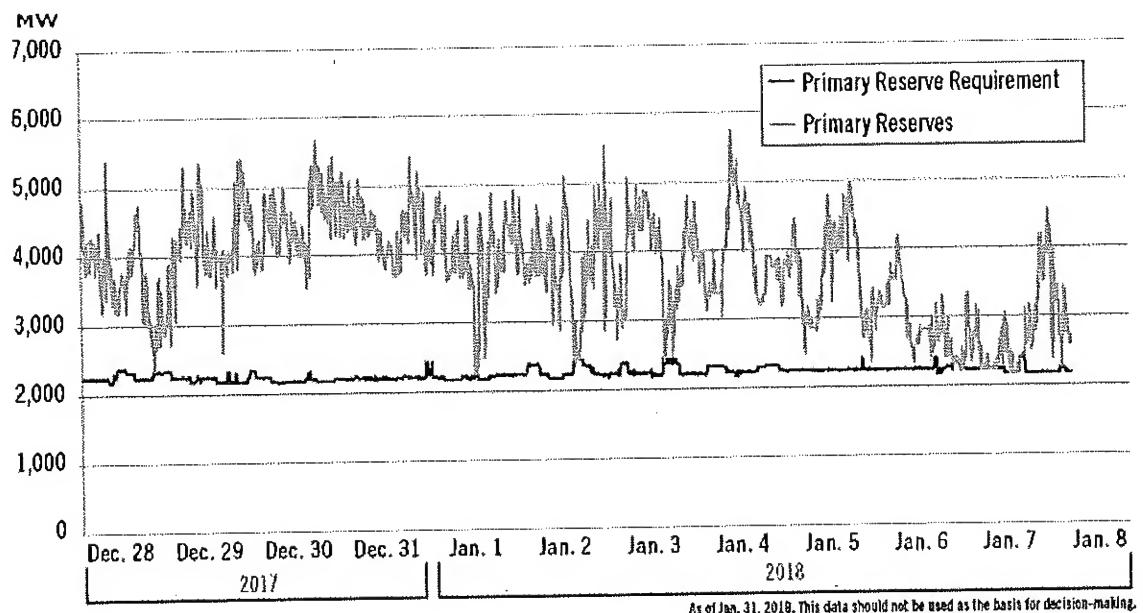
During the cold snap period, PJM maintained healthy reserve margins. Figure 6 illustrates that during the peak demand period of the cold snap period, PJM maintained more than a 23 percent reserve margin above the 18,690 MW of capacity that was unavailable. To put that into perspective, the PJM system had 32,645 MW of additional capacity available to serve demand.

Figure 6. PJM Available Capacity Reserve Margin, Jan. 5, 2018 HE 1900

PJM Cold Snap System Peak Period		Description
Jan. 5, 2018 HE 1900		
PJM Installed Capacity	188,875 MW	All PJM capacity market committed internal and external installed capacity (Includes wind and solar at unforced capacity ratings. Excludes energy-only units and any winter ambient uprates.)
All Outages	18,690 MW	Includes: All forced, maintenance and planned outages.
PJM Installed Capacity Available	170,187 MW	"PJM Installed Capacity" less "All Outages"
Demand	137,522 MW	The PJM peak demand during the cold snap period
Installed Capacity Reserve Margin	37.3%	"PJM Installed Capacity" divided by "Demand" less 1
Available Capacity Reserve Margin	23.7%	"PJM Installed Capacity Available" divided by "Demand" less 1

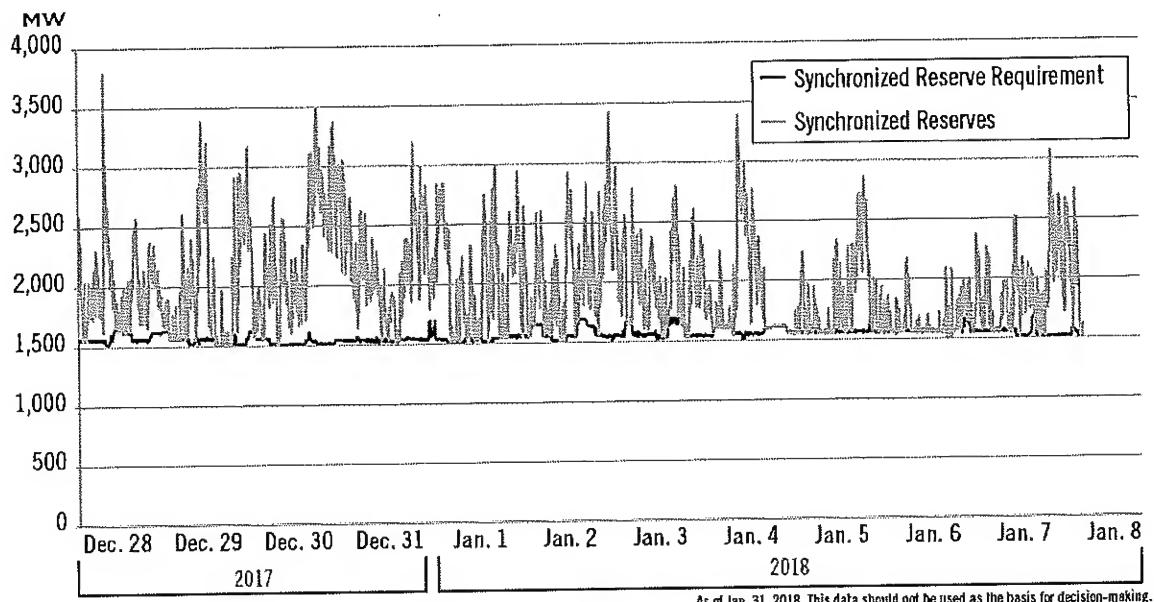
During the cold snap, PJM did not experience reserve shortage conditions. Sufficient reserves were available to meet both the contingency (primary) and synchronized reserve requirements as illustrated below. Figure 7 compares the contingency (primary) reserve values to the contingency reserve requirement and Figure 8 compares the synchronized reserves to the synchronized reserve requirement<sup>11</sup>.

Figure 7. Contingency (Primary Reserves), Dec. 28, 2017–Jan. 8, 2018



<sup>11</sup> Primary reserves are the total quantity of resources both synchronized and not synchronized to the grid, assigned to respond within ten minutes when deployed. Synchronized reserves is a subset of primary reserves, and is comprised of only resources that are synchronized to the grid.

Figure 8. Synchronized Reserves, Dec. 28, 2017–Jan. 8, 2018



## Conclusion and Next Steps

PJM noted in its previous report<sup>12</sup> on performance during the cold snap that thanks to the reliable operations from PJM members and operators, the system performed well in the cold snap, evidence that the grid in the PJM service area remains strong, diverse and reliable. In fact, PJM has implemented the Reliability Pricing Model and Capacity Performance as key steps to securing an adequate level of reserves with enhanced unit performance to mitigate the impacts of extreme weather and generator retirements resulting from environmental regulations.

Additionally, PJM noted that more work needs to be done to properly recognize and price key generator attributes associated with fuel security. NETL's report continues an important conversation to focus on the resilience of the nation's bulk electric system. In prior reports and filings with FERC, PJM has highlighted the importance of developing fuel security criteria that can be incorporated and priced in the PJM markets. PJM is also looking to add resilience drivers into its planning process and to enhance gas-electric coordination.

PJM has detailed both its own actions in order to enhance resilience and specific recommendations for action that it submitted to FERC in PJM's March 9 Comments in FERC's Grid Resilience docket (Docket No. AD18-7-000). PJM intends to continue communication with the DOE and with the FERC, states and stakeholders to underscore these needed actions and looks forward to working with the DOE to further focus efforts on ensuring a competitive market-based approach that ensures fuel security is appropriately valued in the markets.

PJM urges that the comments above be taken as a factual response to the conclusions reached in the NETL report. Most importantly, PJM appreciates NETL's contribution to focusing policymakers' attention on these issues going forward.

<sup>12</sup> *Id.*, PJM 2017/2018 Cold Snap Report

**Troy, Angela (CONTR)**

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**From:** Mike Langford <mlangford@uwua.net>  
**Sent:** Friday, April 13, 2018 2:04 PM  
**To:** AskOE  
**Subject:** UWUA Comments Re: Federal Power Act Section 202(c) Emergency Order  
**Attachments:** Apr 2018 UWUA Comments Re Fedl Power Act 202C Emerg Order.pdf; Feb 2018 UWUA Ltr Pres Trump.pdf; May 2017 UWUA Ltr Sec Energy.pdf; Oct 2017 UWUA-AFLCIO Grid Resiliency Comments.pdf

**Utility Workers Union of America, AFL-CIO**  
**Comments Re: Federal Power Act Section 202(c) Emergency Order**

The Honorable Rick Perry  
Secretary of Energy

Dear Mr. Secretary:

The Utility Workers Union of America represents tens of thousands of hard-working Americans whose families and communities rely on the electric generation industry for family-supporting jobs and critical revenue to support their local economies. In recent months, we have filed comments (attached) with the Department of Energy seeking the agency's support to allow irreplaceable baseload power generation infrastructure to continue providing resiliency and security to the nation's power grid.

In continued support for the value that reliable, baseload power generators such as coal-fired and nuclear powerplants contribute to our national grid, we ask that you take swift action to issue an emergency order pursuant to Federal Power Act Section 202(c) allowing the power these facilities generate to receive proper market valuation for the full costs of their operation and for the security and reliability they provide to our nation's electric infrastructure.

Continued under-valuation of the contribution made by these facilities is resulting in the premature closure of powerplants, the displacement of tens of thousands of workers and loss of high-quality jobs, the disruption and disintegration of the communities around them, and a dangerous weakening of our physical infrastructure leading to unprecedented national security concerns. No nation can be considered safe that cannot reliably and affordably power its economic and physical systems.

Allowing this alarming trend to continue will create a state of true national emergency, unreckoned with in our lifetimes, as electric power becomes ever less reliable, the grid increasingly unstable and insecure, and entire regional economies sink into ruin.

Once baseload powerplants close, they cannot be brought back in any meaningful timeframe, if allowed to happen, reversal of this mistake will be an economic and political impossibility, leaving our nation with few options. Further, only the most trivial of assistance is currently available to displaced workers and their communities in the face of powerplant closures, creating corresponding social chaos in parallel with the economic and physical harm caused by the erosion of a stable power grid.

Now is the time to act. An emergency order under Section 202(c), or other legal authorities available to you as Secretary of Energy, must occur before the damage becomes irreversible.

We thank you and the agency for the seriousness with which you are taking this unfolding emergency, and stand ready to assist and support in any effort to avert this national crisis.

Sincerely,

D. Michael Langford  
National President  
Utility Workers Union of America, AFL-CIO

National Office  
1300 L Street, N.W., Suite 1200  
Washington, DC 20005  
(202) 899-2851



# UTILITY WORKERS UNION OF AMERICA

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PRESIDENT

STEVEN VANSLOOTEN  
EXECUTIVE VICE PRESIDENT

MICHAEL COLEMAN  
SECRETARY-TREASURER

JOHN DUFFY  
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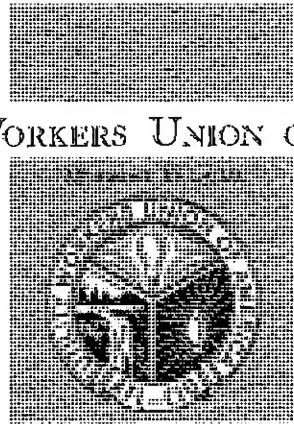
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040003

April 13, 2018

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Secretary of the U.S. Department of Energy

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Sincerely,

*D. Michael Langford*

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National President  
Utility Workers Union of America, AFL-CIO

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MICHAEL COLEMAN  
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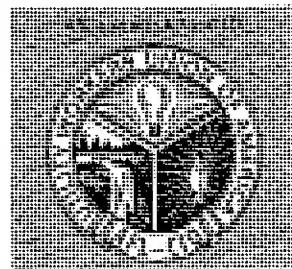
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February 20, 2018

President Donald J. Trump  
The White House  
1600 Pennsylvania Ave, NW  
Washington, DC 20050

Dear President Trump,

The hard-working men and woman who work in our nation's power plants need your help – and they need your help now. Last month, the Federal Energy Regulatory Commission (FERC) rejected a proposed rule by the Department of Energy (DOE) that would have corrected competitive electricity markets to appropriately value attributes uniquely provided by fuel-secure baseload generators - predominantly critical coal and nuclear power plants. FERC's failure to timely address the pressing need to fix America's electricity markets will have devastating consequences for our economy, our power grid, and our national security.

Most alarmingly, power plant closures will be immediate and irreversible. Largely because of punitive regulatory pressures against coal and nuclear power, approximately 60,000 megawatts of fuel-secure baseload power plants have closed over the last several years and many more are slated for premature closure in the near future. Unfortunately, the improved regulatory environment will not stop those closures from happening. Electricity market rules simply do not value the reliability and resiliency attributes that fuel-secure baseload generators provide the grid.

The imminent closure of these plants will have far-reaching effects. First and foremost, the nation's power grid needs fuel-secure baseload power. Coal and nuclear fuel are abundant, reliable, affordable and not vulnerable and unpredictable conditions or emergencies that can disrupt the delivery of other fuels. Coal-fired power plants can stockpile several weeks' or months' worth of fuel on site; nuclear generators store enough fuel to last months or even years.

In the case of an extreme weather emergency, a coordinated attack or any significant disruptions to the fuel delivery infrastructure, fuel-secure baseload generators are the only ones capable of continuing operations. If fuel-secure baseload plants continue to be forced to retire, our power grid is likely to become overloaded or fail in the event of a sudden, extreme increase in demand.

This is not merely a hypothetical situation: the 2014 polar vortex stretched the country's natural gas pipeline system well past its capabilities, resulting in skyrocketing prices and fuel shortages. These shortages during extreme cold temperatures could have been deadly, if not for fuel-secure baseload power plants that essentially carried the grid through the extended emergency. Many of the generators that were running full-out have since retired.

Experts agree. The North American Electric Reliability Corporation (NERC), which is responsible for establishing reliability standards for our grid, described the tenuous situation well in comments it provided to Secretary Perry's proposal. NERC said "Coal and nuclear generation generally have the unique attributes of low outage rates, high availability rates, and, with on-site storage, low fuel supply sensitivity necessary to provide secure and stable capacity to the grid. While their current benefits and potential are significant, non-synchronous

generation and natural gas-fired facilities do not currently replace the secure capacity provided by coal and nuclear generation."

FERC's failure to approve the DOE proposal to properly value the reliability and resiliency attributes uniquely provided by fuel-secure baseload generators could soon prove to be a catastrophic mistake. We do not have the luxury of kicking the can any farther down the road. Without immediate action to stop the imminent closure of fuel-secure baseload generators, our country will find itself confronted with a crisis that could have been prevented. This is not a question of if, but when.

I urge the White House to direct DOE Secretary Rick Perry to use the emergency powers under his authority to stop the coming closures of additional coal and nuclear plants across the country. This is the only way to prevent the impending disaster. The country cannot afford further delays. DOE must act right away.



Sincerely,  
D. Michael Langford  
National President  
Utility Workers Union of America, AFL-CIO

CC: Hon. Rick Perry, Secretary of Energy

# UTILITY WORKERS UNION OF AMERICA

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PRESIDENT

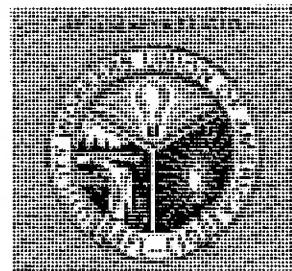
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042003

May 12, 2017

The Honorable Rick Perry  
Secretary of the U. S. Department of Energy

Via Email: [Joe.Uddo@hq.doe.gov](mailto:Joe.Uddo@hq.doe.gov)

Dear Mr. Secretary:

Unions, labor and power plant workers across the country applaud the Department of Energy's study examining electricity markets, the value of baseload power and the long-term security and resiliency of the electric grid. Baseload coal and nuclear power plants employ more than 154,000 workers, produce major infrastructure projects that put Americans to work, and support a resilient electric grid.

Baseload power plants have long been the "work horses" of the electric system, providing energy to customers 24 hours a day, 365 days a year. With significant on-site fuel reserves, they provide the resiliency required to keep electricity flowing under all circumstances since their operation is not subject to interruption by extreme events such as weather or attacks on infrastructure that disrupt fuel delivery to other generation resources. Recently, EPA Administrator Pruitt noted as much when he talked about the consequences of an attack on key infrastructure. Our nation's security is dependent on maintaining these plants to support a resilient supply of electricity.

However, numerous baseload power plants have permanently shut down in recent years, and many more are expected to close prematurely in the very near future. Once they are gone, they are gone for good. Baseload generation is under serious threat from market-distorting subsidies and mandates, regulations that target these resources, low natural gas prices and markets that don't value resiliency. We are at a crisis point. Further decline in the number of plants will not only impact the grid and national security, it will cost valuable jobs and discourage industrial development opportunities nationwide. This is an outcome America simply can't afford.

Our baseload power plants and the dedicated, skilled workers who operate them are the lifeblood of their communities. They deliver a strong tax base and support between three and eight times more high-paying jobs than do other forms of electricity generation. We depend on these plants to create a robust workforce, and the country depends on them to support a healthy economy and electricity supply.

Unless action is taken, the long-term viability of baseload power plants along with the jobs and substantial economic opportunities they bring is at risk. And, our national security could be compromised if we don't ensure a resilient grid. We encourage the Administration to take prompt and meaningful action to protect baseload power plants and America's energy future.

Sincerely,

D. Michael Langford  
National President

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Grid Reliability and Resilience Pricing;  
Proposed Rule

Docket No. RM18-1-000

**COMMENTS OF THE UTILITY WORKERS  
UNION OF AMERICA, AFL-CIO**

On September 27, 2017, the Secretary of Energy notified the Federal Energy Regulatory Commission ("Commission") by letter that, pursuant to authority under Section 403 of the Department of Energy Organization Act, he was proposing action by the Commission on a proposed rule to protect the resiliency of the electric grid ("proposal"). The Department of Energy ("DOE") published the proposal on October 10, 2017.<sup>1</sup>

Pursuant to the Commission's notice in the above captioned docket inviting comments on the Secretary of Energy's proposal, the Utility Workers Union of America, AFL-CIO ("UWUA") respectfully submits for the Commission's consideration the following comments. These comments reflect the UWUA's experience that coal and nuclear electric generating units ("EGU") provide reliability and resiliency attributes critical to the delivery of affordable, reliable, and resilient electric service.

**DESCRIPTION OF UWUA**

The UWUA is one of the most progressive unions in all of the labor movement. The UWUA has over 50,000 members working in the electric, gas, water, and nuclear industries across the United States.

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<sup>1</sup> 82 Fed. Reg. 46940.

## UWUA INTEREST IN THE PROPOSAL

For decades, UWUA members working at baseload coal and nuclear EGUs have brought significant value to the electric grid. Time and again, these EGUs, with their stable sources of on-site fuel, have kept the lights on when the grid is strained to the breaking point. The UWUA has a substantial interest in fixing outdated market structures that fail to capture the unique value provided by baseload coal and nuclear EGUs – and the UWUA members running them. Getting these markets right is not simply a matter of sound policy, it impacts our members' jobs and communities.

In the last seven years, 101,000 megawatts ("MW") of coal-fired generating capacity has retired or has announced plans to retire.<sup>2</sup> In that time, five nuclear EGUs with a capacity of nearly 5,000 MW have closed, with another six nuclear EGUs currently projected to close in the next nine years.<sup>3</sup> Workers at these EGUs have been hit hard. Since 2011, nearly 8,000 jobs have been lost in fossil fuel electric power generation,<sup>4</sup> and nearly 6,500 nuclear power generation jobs lost during that same period.<sup>5</sup> If baseload coal and nuclear generation EGUs are not

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<sup>2</sup> AM, CLEAN COAL, FOR CLEAN COAL ELEC., RETIREMENT OF COAL-FIRED ELECTRIC GENERATING UNITS (June 11, 2017).

<sup>3</sup> ENERGY INFO. ADMIN., *Three Mile Island is the Latest Nuclear Power Plant to Announce Retirement Plans* (June 13, 2017), <https://www.eia.gov/todayinenergy/detail.php?id=31612>.

<sup>4</sup> ENERGY INFO ADMIN., *Power Sector Employment Declines, Except for Renewable Electricity Generators* (Dec. 19, 2014) <https://www.eia.gov/todayinenergy/detail.php?id=19271> (finding 1,750 jobs lost from Jan. 2011-June 2014) and compare BUREAU OF LABOR STATISTICS, *Quarterly Census of Employment and Wages, Private, NAICS 221112 Fossil fuel electric power generation, All Counties, July 2014*, [https://data.bls.gov/cew/apps/table\\_maker/v4/table\\_maker.htm?type=1&year=2014&qtr=3&own=5&ind=221112&s upp=0](https://data.bls.gov/cew/apps/table_maker/v4/table_maker.htm?type=1&year=2014&qtr=3&own=5&ind=221112&s upp=0) (99,294 jobs) and *Mar. 2017*, [https://data.bls.gov/cew/apps/table\\_maker/v4/table\\_maker.htm?type=1&year=2017&qtr=1&own=5&ind=221112&s upp=0](https://data.bls.gov/cew/apps/table_maker/v4/table_maker.htm?type=1&year=2017&qtr=1&own=5&ind=221112&s upp=0) (93,632 jobs).

<sup>5</sup> ENERGY INFO ADMIN., *Power Sector Employment Declines, Except for Renewable Electricity Generators* (Dec. 19, 2014) <https://www.eia.gov/todayinenergy/detail.php?id=19271> (finding more than 4,900 jobs lost from Jan. 2011-June 2014) and compare BUREAU OF LABOR STATISTICS, *Quarterly Census of Employment and Wages, Private, NAICS 221113 Nuclear electric power generation, All Counties, July 2014*, [https://data.bls.gov/cew/apps/table\\_maker/v4/table\\_maker.htm?type=1&year=2014&qtr=3&own=5&ind=221113&s upp=0](https://data.bls.gov/cew/apps/table_maker/v4/table_maker.htm?type=1&year=2014&qtr=3&own=5&ind=221113&s upp=0) (47,239 jobs) and *Mar. 2017*,

properly valued for their services, thousands more workers are at risk of losing their jobs. Our members are skilled laborers who have specific expertise derived from long experience. The quality jobs they now have working in EGUs that are at-risk for closure are increasingly hard to find in their regions, let alone across the country. Absent Commission action, the jobs that our members at coal and nuclear EGUs stand to lose cannot be easily replaced.

Further coal and nuclear EGU retirements not only undermine our members' livelihoods, but also impact the communities in which they live. In 2012, a member of the Avon Lake, Ohio city council testified to Congress about the rippling harms that closure of the local EGU would have on the city.<sup>6</sup> The resulting substantial reduction in collected income taxes would slice the emergency medical service operating budget in half.<sup>7</sup> Closing the EGU would cut revenue for the Avon Lake City School District by nearly \$4 million a year – an 11% reduction.<sup>8</sup> This would force the district to end programs, including those for students with special needs – such as for autism, depression, ADHD, and those suffering from the effects of trauma or abuse.<sup>9</sup> The Avon Lake School District Superintendent said the loss of this revenue would be “devastating.”<sup>10</sup> Absent Commission action, further coal and nuclear EGU closures will make it harder to pay for the schools, hospitals, and basic services that keep the communities in which our members live vibrant and healthy.<sup>11</sup>

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[https://data.bls.gov/cew/apps/table\\_maker/v4/table\\_maker.htm?type=1&year=2017&qtr=1&own=5&ind=221113&supp=0](https://data.bls.gov/cew/apps/table_maker/v4/table_maker.htm?type=1&year=2017&qtr=1&own=5&ind=221113&supp=0) (45,554).

<sup>6</sup> *Oversight: Review of the Environmental Protection Agency's Mercury and Air Toxics Standards (MATS) for Power Plants: Hearing Before the S. Comm. on Energy and Pub. Works, Subcomm. on Clean Air and Nuclear Safety*, S. HRG. No. 112-963 at 78-86 (Mar. 20, 2012) (testimony of Rob James, Avon Lake City Council, Ward I).

<sup>7</sup> *Id.* at 80.

<sup>8</sup> *Id.* at 82.

<sup>9</sup> *Id.* at 83.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 85. See also Mark Haggerty, *Communities at Risk from Closing Coal Plants*, HEADWATERS ECON. (Mar. 2017), <https://headwaterseconomics.org/energy/coal/communities-coal-plant-closures/> (noting that the

Our members do not seek Commission action only for the sake of maintaining their jobs. Rather they know the value that their work brings to the electricity grid – because they have lived it. The on-site fuel at baseload coal and nuclear EGUs provides the electricity grid with reliability and resiliency characteristics that are unique across the fleet. This conclusion is not based on theoretical market models or complex algorithms, but on the experience of our members working day and night to run these EGUs. If baseload coal and nuclear EGUs shut down because they cannot capture the proper value for their irreplaceable benefits, then the markets have failed to maintain an affordable and reliable grid. Absent Commission action, the country is at imminent risk of losing coal and nuclear EGUs that provide critical reliability and resiliency attributes to the electricity grid.

Reliable electric service in many parts of the country is no longer based on requirements crafted by engineers and implemented by workers. Instead, it is entrusted to markets, designed by economists, that are heedless of any unpriced factor, even if the factor is a public necessity like resiliency. Electricity markets are supposed to be a means to an end – affordable, reliable, and resilient electric service. They are not an end themselves, and as a means, they aren't working.

The modern electricity grid is increasingly becoming a place where theory replaces experience. When experience shows theory to be wrong, the response is to ignore experience and tinker with theory, over and over again. This is electricity regulation that elevates market design over reliability. But reliability is a matter of public health and safety, and one we cannot afford to get wrong. We can crumple up a theoretical market design and start over. Critical

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economic impacts of coal EGUs will be felt acutely locally, particularly in areas that have challenges such as poverty status, language barriers, and isolation from larger job centers).

infrastructure providing essential reliability attributes, once lost, is gone forever. It is time for the Commission to fix the problem, fix the markets, and continue the long tradition upheld by UWUA members of a reliable and resilient electricity grid.

## COMMUNICATIONS

All communications, correspondence, and documents related to this matter should be directed to the following person:

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## COMMENTS

### **I. Baseload Coal and Nuclear EGUs Provide the Electric Grid With Crucial Reliability and Resiliency Attributes.**

DOE's recent Staff Report on Electricity Markets and Reliability ("DOE Staff Report"),<sup>12</sup> as well as the Secretary of Energy's proposal, highlight the growing importance of the distinct but interrelated concepts of electricity reliability and resiliency. While defined in a number of ways, reliability essentially incorporates history to help design systems and equipment in a manner that mitigates generally known risk. Resiliency, on the other hand, accounts for an increasingly uncertain future, one with continuously evolving threat vectors that increase the potential for low probability, high consequence events. In this way, resiliency is a crucial element of reliability. As PJM Interconnection ("PJM") explains, resilience is "preparing for,

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<sup>12</sup> STAFF REPORT TO THE SECRETARY ON ELECTRICITY MARKETS AND RELIABILITY (Aug. 2017).

operating through and recovering from a high-impact, low-frequency event. Resilience is remaining reliable even during these events.”<sup>13</sup>

Always-on baseload generation resources, historically coal and nuclear EGUs, provide essential reliability services critical to operating a reliable and resilient electricity grid. As the North American Electric Reliability Corporation (“NERC”) recently noted, these units “provide frequency support services as a function of their large spinning generators and governor-control settings, along with reactive support for voltage control. Power system operators use these services to plan and operate reliably under a variety of system conditions, generally without the concern of having too few of these services available.”<sup>14</sup> While natural gas and other resources provide some of these services, a number of factors affect whether these resources are equipped and available to provide the full breadth of necessary reliability services.<sup>15</sup>

With high availability rates, low forced outages, and secured on-site fuel, coal and nuclear baseload EGUs are also critical to electric grid resiliency. NERC explained that “on-site fuel allow these units to operate in a manner independent of supply chain disruptions.”<sup>16</sup> These attributes make coal and nuclear EGUs central to effective “fuel assurance,” or the ability to maintain operations independent of external delivery infrastructure or rapidly changing weather patterns,<sup>17</sup> on the grid.

By contrast, natural gas EGUs do not store fuel on site. Rather natural gas is delivered to the EGU as needed for generation. Thus, disruptions at any phase of the natural gas supply

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<sup>13</sup> EVOLVING RESOURCE MIX AND SYSTEM RELIABILITY 37 (Mar. 30, 2017).

<sup>14</sup> DOE Staff Report at 64 (citing letter from Gerry Cauley, President and CEO, NERC to Sec. of Energy Rick Perry, May 9, 2017 (“NERC Letter”)).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> PJM, EVOLVING RESOURCE MIX, , *supra* note 13 at 24.

chain, including production, processing, transportation in pipelines, or storage – all of which have seen disruption in recent years – will diminish or eliminate natural gas availability at the EGU. Furthermore, coal and nuclear fuel use is highly concentrated in the electricity subsector. Natural gas has many uses outside the subsector, including for manufacturing and – as was critical during the 2014 Polar Vortex – home heating. As many EGUs still lack firm contracts for the resource, natural gas unavailability presents an increasing vulnerability to the electric grid as generators become more reliant on natural gas. Natural gas brings benefits to the electricity grid, but the resiliency of on-site fuel is not one of them. Reliability elements are not choices on a menu. All of them must be maintained.

The loss of coal and nuclear EGUs has a substantial impact on fuel assurance attributes critical to electric grid resilience. Analysis by PJM found that even moderate retirements of these EGUs would reduce PJM's fuel assurance capability by almost 30% if the units were replaced by natural gas.<sup>18</sup> That capability would be cut almost in half if capacity lost from high coal and nuclear generation retirement is replaced by natural gas, and by 60% if replaced by renewables.<sup>19</sup> Such a loss could seriously undermine the ability of an otherwise reliable electric grid to withstand sudden shocks – natural or manmade. As PJM observes, “[h]istory has shown that, despite having a system that meets reliability standards and requirements, rare extreme events, such as those experienced in PJM and other parts of the world, may produce negative impacts to the system that threaten the ability to continue to deliver energy services.”<sup>20</sup> Based on this experience, PJM stress-tested 98 hypothetical generation portfolios, each deemed “reliable,”

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<sup>18</sup> *Id.* at 24.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 33.

against a polar vortex event, and found that only 34 were also resilient.<sup>21</sup> Notably, the vast majority of these 34 resilient portfolios had a high share of coal and nuclear generation.<sup>22</sup>

### **II. Baseload Coal and Nuclear EGUs Were Critical to Reliable and Resilient Electric Service During the Polar Vortex.**

PJM's stress test confirms what was already learned during the 2014 Polar Vortex. The electricity grid needs existing coal and nuclear EGUs to maintain reliable operation across all scenarios, including a high-impact, low-frequency event. Coal-fired EGUs – and the UWUA members operating them – stepped up to maintain crucial, needed power as temperatures dropped and electricity demand spiked. According to Commission staff, “data for January 2014 indicates that the sizable increase in electric demand was served from mostly coal-fired generation while natural gas-fired generation actually declined slightly between December 2013 and January 2014.”<sup>23</sup> Nuclear EGUs – already operating at nearly full capacity – continued to generate needed electricity at critical periods unaffected by the cold temperatures.

Coal was critical in preventing calamitous impacts on customers and the nation during the Polar Vortex. Yet, opponents have criticized forced outages at coal-fired EGUs during the Polar Vortex in an attempt to challenge coal's resiliency attributes. To the contrary, when put into context, these statistics make the case for coal resiliency stronger.

Forced outages occurred across all generation types during the Polar Vortex for a variety of reasons. For coal, the major issue turned out to be the Environmental Protection Administration's (“EPA”) Mercury and Air Toxics Standards (“MATS”). A substantial number

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<sup>21</sup> APPENDIX TO PJM'S EVOLVING RESOURCE MIX AND SYSTEM RELIABILITY 41 (Mar. 30, 2017).

<sup>22</sup> *Id.*

<sup>23</sup> STAFF PRESENTATION FOR THE WINTER 2013-2014 OPERATIONS AND MARKET PERFORMANCE IN RTOs AND ISOS TECHNICAL CONFERENCE 9, Docket No. AD14-8-000, Apr. 1, 2014.

of forced coal outages within PJM occurred at EGUs slated for retirement due to MATS.<sup>24</sup> One analyst concluded that about half of coal-fired EGU outages “seems to be related to not maintaining units scheduled to imminently retire.”<sup>25</sup> In other words, forced coal-fired EGU outages during the Polar Vortex were more the result of the government’s “War on Coal” than any other factor. On the other hand, “[t]he concern related to gas plants is that as the grid becomes more reliant on gas, the shortcomings of the gas delivery system will increase unless ameliorated.”<sup>26</sup> As NERC concluded, “one of the largest issues that impacted gas-fired generation was the curtailment of fuel supply. Unlike coal and fuel oil, natural gas is not typically stored on site. As a result, generators rely on real-time delivery of natural gas from their suppliers. As natural gas is widely used outside the power sector, the demand from other sectors—in particular residential heating demand during cold winter weather—can critically affect the ability of pipeline operators and suppliers to deliver natural gas to the power sector.”<sup>27</sup>

Indeed, the most prevalent cause of forced generation outage during the Polar Vortex was natural gas availability, far more so than any other issue. As temperatures plunged, demand for natural gas soared – so high that some of our members report being unable to procure any natural gas or oil to run dual-fueled plants. The numbers back such anecdotes. According to PJM, 24% of all forced outages resulted from natural gas interruptions.<sup>28</sup> By comparison, 15% of forced outages for all fuel types, including natural gas and coal, resulted from weather-related issues, a

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<sup>24</sup> Letter from Craig A. Glazer, Vice President, Fed. Gov’t. Policy, PJM to Rep. Fred Upton, Chairman of the H. Comm. on Energy and Commerce 9 Fig. 6, Apr. 14, 2014.

<sup>25</sup> Judah Rose, *Waiting for the Next Polar Vortex*, FORTNIGHTLY MAGAZINE, June 2014.

<sup>26</sup> *Id.*

<sup>27</sup> NERC, POLAR VORTEX REVIEW 13 (Sep. 2014).

<sup>28</sup> PJM, ANALYSIS OF OPERATIONAL EVENTS AND MARKET IMPACTS DURING THE JANUARY 2014 COLD WEATHER EVENTS 25 (May 8, 2014).

category that includes frozen coal piles as well as many other issues.<sup>29</sup> This unavailability of natural gas, along with other factors, led to natural gas-fired EGUs having the highest forced outage rate during the Polar Vortex, fully 55% across all generator types.<sup>30</sup> Within PJM specifically, natural gas-fired EGUs accounted for 47% of forced outages, even though gas-fired EGUs comprised just 29% of the total available generation.<sup>31</sup>

Coal-fired EGUs were critical during the Polar Vortex to preventing load shedding that would have created a public health crisis as customers were left in the cold during freezing temperatures. Yet much of this capacity is now gone – along with the jobs behind it – and will not be available for the next grid emergency, whatever form it takes. American Electric Power (“AEP”) CEO Nicholas Akins testified to Congress that 89% of the generation retired by AEP because of MATS was called upon to meet demand during the Polar Vortex.<sup>32</sup> As the *New York Times* summarized in a headline, “Coal to the Rescue, but Maybe Not Next Winter.”<sup>33</sup> The coal-fired EGUs that remain performed strongly during the Polar Vortex, but are now under great threat from grossly distorted markets. Their closure will exacerbate the greatest challenge posed to the electricity grid during the Polar Vortex – natural gas unavailability.

FERC should have addressed this problem aggressively three years ago. But better late than never.

### **III. There is Imminent Risk of Losing Resiliency Benefits Provided by Baseload Coal and Nuclear EGUs that Markets Do Not Properly Value.**

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<sup>29</sup> *Id.*

<sup>30</sup> POLAR VORTEX REVIEW, *supra* note 27.

<sup>31</sup> 2014 COLD WEATHER EVENTS, *supra* note 28 at 25.

<sup>32</sup> *Keeping the lights on - are we doing enough to ensure the reliability and security of the U.S. electric grid?: Hearing Before the S. Comm. on Energy and Nat. Res.* S. H.R.G. No. 113-271 at 58 (Apr. 10, 2014).

<sup>33</sup> Matthew L. Wald, Mar. 11, 2014 at B1.

A balanced and diversified portfolio of generation including a large share of coal and nuclear baseload EGUs is critical to providing essential reliability services, including the fuel assurance capability necessary for grid resiliency. However, these generating resources have been under unprecedented pressure in recent years, pushing the electric grid to a tipping point where it is at imminent risk of losing substantial resiliency attributes.

Unless action is taken to compensate generators for essential resiliency services in electricity markets, otherwise fully-functional baseload EGUs in electricity markets are at risk of closure at historic rates. In PJM alone, over the past three years, nearly 9,000 MW of coal-fired generation have retired, the equivalent of a dozen large power plants. Much of this capacity operated during the Polar Vortex and is no longer available to run in the event of system stress. Even more concerning, numerous baseload generating EGUs in PJM have announced that they are financially challenged and are closing or contemplating closure. As much as 16,000 MW of additional reliable baseload generating capacity – enough to power over 12 million homes – could retire over the next several years, leaving PJM without fuel-secure baseload resources.

Other markets are experiencing similar concerns. The New England Independent System Operator (“NE-ISO”) recently warned that between already-announced retirements removing 2,200 MW of non-gas-fired capacity, over 5,500 MW of additional oil and coal capacity at risk for retirement in coming years, and uncertainty surrounding the future of 3,300 MW from the region’s remaining nuclear EGUs, it was “skating by on the coldest days.”<sup>34</sup> NE-ISO came to an ominous conclusion that reverberates across electricity markets, “If a ‘perfect storm’ of problems were to occur, ISO system operators could be forced to use stronger measures, such as asking the

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<sup>34</sup> 2017 REGIONAL ELECTRICITY OUTLOOK 27, 29.

public to conserve electricity or, in extreme cases, ordering controlled power outages. This risk increases after the upcoming generator retirements.”<sup>35</sup>

No one should mistake these closures as simply a matter of economics. Let there be no mistake, as warned by the UWUA and other unions, as well as other stakeholders and experts, we are now feeling the reverberations of expensive EPA regulations. As far back as 2011, comments joined by the UWUA raised the alarm regarding potential coal-fired EGU closures and questioned EPA’s projections concerning MATS.<sup>36</sup> Our comments presented detailed analysis warning that 56,000 MW of coal-fired generation was at risk for closure due to MATS, compared to a risible EPA projection at that time of just 9,900 MW.<sup>37</sup> We further noted that “larger units may be closed in response to the rule due to site constraints, cost, or other considerations.”<sup>38</sup> Our projections were on the mark. The Energy Information Administration reported in 2014 that 60,000 MW of coal-fired generation was projected to close by 2018, with the vast majority retiring by the MATS deadline.<sup>39</sup> Now, saddled by control costs that were grossly underestimated by EPA,<sup>40</sup> larger coal EGUs face challenges in markets.

These regulatory pressures are being compounded by poorly designed electricity markets that fail to compensate baseload generation for reliability and resiliency services. This, in turn,

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<sup>35</sup> *Id.* at 29.

<sup>36</sup> UNION FOR JOBS AND THE ENVIRONMENT, COMMENTS ON THE NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FROM COAL AND OIL-FIRED ELECTRIC UTILITY STEAM GENERATING UNITS AND STANDARDS OF PERFORMANCE FOR FOSSIL-FUEL-FIRED ELECTRIC UTILITY, INDUSTRIAL-COMMERCIAL-INSTITUTIONAL, AND SMALL INDUSTRIAL-COMMERCIAL-INSTITUTIONAL STEAM GENERATING UNITS, EPA Docket No. EPA-HQ-OAR-2011-0044-4250 (Jul. 8, 2011).

<sup>37</sup> *Id.* at 13-14.

<sup>38</sup> *Id.* at 14.

<sup>39</sup> *AEO2014 Projects More Coal-Fired Power Plant Retirements by 2016 Than Have Been Scheduled* (Feb. 14, 2014), <https://www.eia.gov/todayinenergy/detail.php?id=15031>.

<sup>40</sup> See UNION FOR JOBS AND THE ENVIRONMENT COMMENTS, *supra* note 36 at 16-18 (“EPA Overestimates Reliance on Dry Sorbent Injection And Underestimates Unit Retirements”).

undermines diversity and erodes the electric grid's ability to respond to system-wide impacts like a polar vortex. As the DOE Staff Report noted, “[m]arkets need further work to address grid resilience. Market mechanisms are designed to incentivize individual resources rather than develop balanced portfolios.”<sup>41</sup>

Maintaining resiliency services like fuel assurance capability was of little concern when wholesale market constructs were first designed, since the lowest cost generation sources at that time – baseload coal and nuclear EGUs – already incorporated high fuel assurance. Yet the quasi-governmentally designed and operated markets have failed to keep pace with rapidly-evolving factors, including low natural gas prices, environmental regulations, and federal subsidies for renewables, that have placed new pressure on reliable baseload generation with fuel on site.

Without the intervention proposed by DOE, Americans in electricity markets across the country face imminent risk of being left defenseless against the next major grid shock – whether resulting from a known or now-unknown threat. As NERC noted, “[p]lanning approaches, operational coordination, and regulatory partnerships are needed to assure fuel deliverability, availability, security (physical and cyber), and resilience to potential disruptions. Unfortunately, [such] an approach [is] not obvious in electricity markets today.”<sup>42</sup>

#### **IV. Valuing Coal and Nuclear EGU Resiliency Benefits is Consistent With Market Evolution.**

Notwithstanding their current state, electricity market constructs can be modified – as they are so frequently to accommodate a variety of purposes – to efficiently operate while compensating for reliability services. The DOE Staff Report notes that “[a] diverse resource

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<sup>41</sup> DOE Staff Study at 102.

<sup>42</sup> *Id.* at 92 (citing NERC Letter).

portfolio could complement wholesale market products that recognize and compensate providers for the value of [essential reliability services] on a technology-neutral basis.”<sup>43</sup> This may be optimal for society. “There are tradeoffs between multiple desirable attributes for the electric grid. A more reliable and resilient system may be more costly than the least-cost system. Consumer life, safety and health are dependent on a reliable and resilient electric grid, making the grid a national security asset.”<sup>44</sup>

Indeed, the Commission has intervened in the markets on numerous occasions in order to achieve reliability and other similar “extra-market” objectives. For example, the Commission recognized a flaw in the markets that could lead to a long-term shortage in electricity supply, and took action to remedy that flaw. Prior to 2006, the market incentives in PJM’s capacity markets were such that potential new generators could be incentivized to bid at a level below their actual cost of generation – generators that receive state subsidies, for example. In those instances, below-cost bids could skew downward the capacity auction clearing price, thereby discouraging the development of new generation and, ultimately, reducing the available supply of electricity.<sup>45</sup> In response, the Commission approved PJM’s Minimum Offer Price Rule, which establishes a price floor for new generators’ bids to protect against artificial suppression of the capacity markets.<sup>46</sup>

This is consistent with many other instances of the Commission having identified and taken action to rectify market flaws that would impair the provision of affordable, reliable, and resilient electric service. Such actions include: (i) approval of several ISO-NE “Winter

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<sup>43</sup> *Id.* at 91.

<sup>44</sup> *Id.* at 61.

<sup>45</sup> See *NRG Power Marketing v. FERC*, No. 15-1452, slip op. at 3-6 (D.C. Cir. 2017) (providing background on Minimum Offer Price Rule).

<sup>46</sup> *Id.*

Reliability Programs” – out-of-market solutions to ensure adequate fuel supplies for winter, which provided additional compensation for demand response, oil inventory, dual-fuel, and LNG resources;<sup>47</sup> (ii) requiring capacity markets to recognize transmission constraints through the inclusion of locational components, which generally results in the procurement of minimum quantities of capacity from local generating resources;<sup>48</sup> and (iii) approval of “make-whole” payments such as the Day-Ahead Margin Assurance Payment, which is aimed at addressing price volatility by compensating market participants for flexibility in their real-time electricity market offers.<sup>49</sup>

In other words, the existing market structures have evolved over time, and a key part of that evolutionary process has been the identification of market flaws and the intervention by the Commission to address them. The Commission has historically recognized that the markets are a means to an end. To the extent that market designs and structures have failed to compensate adequately participants for valuable services provided in furtherance of that end, the Commission has responded appropriately by implementing mechanisms necessary to remedy those flaws in order to provide affordable, reliable, and resilient service.

Today, the failure of the markets to recognize and compensate adequately baseload coal and nuclear EGUs for the critical reliability and resiliency attributes they provide is simply another flaw that stands in the way of that objective. The Commission should intervene to ensure that the markets evolve once again to appropriately value these attributes, and thereby prevent customers from losing electricity when they need it most, rather than allowing the flaw to persist merely in the name of preserving a market purity that does not and has never existed.

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<sup>47</sup> See, e.g., *ISO New England, Inc.*, 152 FERC ¶ 61,190 (2015).

<sup>48</sup> FERC, STAFF REPORT ON CENTRALIZED CAPACITY MARKET DESIGN ELEMENTS 15 (Aug. 2013).

<sup>49</sup> See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,025 at PP 6-8 (2011).

**V. The Commission Should Take Action to Ensure the Resiliency Benefits Provided by Coal and Nuclear EGUs are Properly Valued.**

It is clear that the Commission should act and finalize the DOE proposal. As DOE has proposed, the Commission should require regional transmission organizations (“RTOs”) and independent system operators (“ISOs”) to amend their tariffs to ensure that the full reliability and resiliency benefits of existing coal and nuclear EGUs are recognized and fully compensated, and that markets do not lose those crucial reliability and resiliency attributes from the premature retirement of existing coal and nuclear facilities. To ensure that existing coal and nuclear EGUs are able to remain in the market, these units should be permitted to, as proposed by DOE, recover fully allocated costs, including but not limited to, operating and fuel expenses, costs of capital and debt, and a fair return on equity and investment.<sup>50</sup>

The Commission’s action should focus solely on existing coal and nuclear facilities, because they are necessary components of a diversified portfolio of EGUs that retains the fuel assurance capability necessary for grid resiliency. Modified gas, hydroelectric, and other non-coal and non-nuclear EGUs cannot provide such diversity and fuel assurance, and including these facilities within the scope of the Commission’s action could undermine the achievement of the Commission’s reliability and resiliency objectives.

Consistent with prior interventions, the development of rules necessary to enact the tariff revisions for the implementation of the Commission’s action should be based, to the extent possible, on existing RTO/ISO mechanisms for the procurement of capacity and energy. Given the urgent need to address this issue and avoid the unnecessary loss of critical reliability and resiliency benefits through the premature retirement of coal and nuclear EGUs, the Commission

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<sup>50</sup> 82 Fed. Reg. at 46948.

should not allow the needed intervention to be unduly procedurally delayed. Therefore, the Commission should require RTOs/ISOs to submit compliance filings in a timely manner.

WHEREFORE, for the foregoing reasons, UWUA asks that the Commission take actions in accordance with the positions asserted here.

Respectfully Submitted,

  
D. Michael Langford  
National President  
Utility Workers Union of America  
AFL-CIO

October 17, 2017

Document Content(s)

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**Troy, Angela (CONTR)**

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**From:** Frank Meznarich <fjmez@local270.org>  
**Sent:** Friday, April 13, 2018 7:04 AM  
**To:** AskOE  
**Subject:** Energy Supply Emergency  
**Attachments:** UWUA Local 270.pdf

It is becoming quite alarming at the rate that Nuclear and Coal Fired Generation plants across America are being shut down. The amount of mega-watts that are being removed for the grid due to closing both Nuclear and Fossil generation is one of National Security.

What plan is in place to supply electricity to millions of Americans? Gas is not the answer, there is not enough gas. Wind Power, not enough, solar, no and right on down the line. These Nuclear and Fossil Plants are vital to the electrification of America and our security as a nation.

These plants need to be compensated for the cost of their operation, they can't be shut down. Once they're they are gone for good, then what will you do?

I am asking that you do the right thing in the interest of the American People and National Security, issue an emergency order Pursuant to Federal Power Act Section 202 (c).

Attached is the comments that I previously sent

Thank You

*Frank J Meznarich  
President, Local 270 UWUA; AFL-CIO  
1400 East Schaaf Road  
Brooklyn Heights, OH 44131  
Phone: (b) (6) · Fax: 216-398-6158*

*"Labor is prior to, and independent of, capital. Capital is only the fruit of labor, and could never have existed if labor had not first existed. Labor is the superior of capital, and deserves much the higher consideration." ~ Abraham Lincoln*

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October 19, 2017

Federal Energy Regulatory Commission  
Secretary of the Commission  
888 First Street, NE  
Washington, DC 20426

Re: Grid Resiliency Pricing Rule  
FERC Docket No. RM18-1-000

**COMMENTS OF THE UTILITY WORKERS UNION OF AMERICA, LOCAL UNION 270 IN SUPPORT OF THE PROPOSED RESILIENCY RULE**

On September 28, 2017, the Department of Energy (“DOE”) issued the “Grid Resiliency Pricing Rule” (the “Proposal”) directing the Federal Energy Regulatory Commission (“FERC”) to adopt a rule requiring operators of organized markets to “ensure that certain reliability and resiliency attributes of electric generation sources are fully valued.” Such a rule, as contemplated by the regulatory language of the Proposal, will ensure that existing nuclear and coal-fired electric generating stations in Ohio will be compensated appropriately and fully for their costs of operation and will avoid premature retirement. Adoption of that rule will thus sustain the long-term viability of critical power plants, preserve and create jobs, maintain electric reliability, and provide substantial economic benefits to the many hard-working Americans living throughout the region.

UWUA Local 270 strongly supports the Proposal and shares the Secretary's urgency that FERC act promptly to direct operators of organized markets to issue the requested rule. FERC has the ability to act, and must act, without undue delay to avoid premature closure of crucial power plants and our members' loss of critical economic and reliability benefits. FERC has thoroughly examined how electric markets function and how those markets affect the continued operation of crucial power plants needed for reliability for some time. FERC has the requisite basis to act now. There is no time for delay. In addition to acting promptly, FERC should also direct organized market operators to issue a comprehensive and enduring set of rules, based on the regulatory language of the Proposal, for the proper compensation of critical power plants. Protracted proceedings undertaken by organized market operators that fail to develop fair, compensatory and transparent rules will only engender market uncertainty and delay in providing sufficient compensation to these facilities, thereby jeopardizing the operation of the very plants that the DOE seeks to maintain in operation.

### **I. COMMUNICATIONS**

All communications, correspondence, and documents related to this proceeding should be directed to the following person:

Frank J. Meznarich Sr.  
President  
UWUA Local 270  
1400 East Schaff Rd., Brooklyn Heights, Ohio 44131  
(b) (6)  
[fjmez@local270.org](mailto:fjmez@local270.org)

### **II. DESCRIPTION OF UWUA LOCAL 270**

UWUA Local 270 is a progressive labor organization that represents individuals in the Electric Utility, Generation and Water industries.

### **III. DESCRIPTION OF UWUA LOCAL 270'S INTEREST IN PROCEEDING**

UWUA Local 270 is a party to a collective bargaining agreement with the owners of a nuclear power plant located in Ohio. As a result, the wages, terms and conditions of employment of its members may be directly affected by the actions taken by the FERC and operators of organized markets in this proceeding. Thus, UWUA Local 270 members have a direct and substantial interest in this proceeding. As well, the unique perspective of UWUA Local 270 and its members will only serve to enhance the record in this proceeding.

#### **IV. COMMENTS**

The communities where struggling baseload coal and nuclear power plants are located are dependent on the jobs and economic development opportunities the power plants provide. The recent decline in Ohio's electric power industry, for example, has led to reductions in operations and capital improvement expenditures at numerous power production and manufacturing facilities across Ohio. This has led to extreme hardship for the thousands of union workers employed in this industry as well as their families.

It is imperative that baseload coal and nuclear plants continue to operate in light of these dire circumstances. Baseload coal and nuclear plants in Ohio provide thousands of MWs of reliable power, and provide union jobs and economic opportunities to UWUA Local 270 members. UWUA 270 has approximately 1,000 members including those who work at the Perry Nuclear Power plant and a coal plant in Avon, Ohio. The maintenance and capital improvement work on these plants also supports the local economy by creating thousands of well-paying union jobs for contractors during plant outages. In addition, these plants contribute millions each year in state and local tax revenues that support local schools, police and fire departments and other vital public services.

The loss of jobs, tax revenue, and the ripple effect of such losses throughout the local economy, will have a severely detrimental impact on the region.

The issuance of a rule preserving the continued operation of resilient baseload coal and nuclear power plants will maintain a reliable supply of electricity for the region's energy-intensive economy in two ways. First, the preservation of certain plants will avoid the need to replace lost generation with imports and the associated construction of infrastructure to facilitate such importation. Preserving baseload coal and nuclear power plants will keep these needed, reliable facilities running close to home without the need to depend on distant resources, particularly during catastrophic events like severe storms, to fulfill our region's dynamic need for reliable electricity.

Second, premature plant closures will deplete the stable of highly skilled (and specifically trained and experienced) employees, many of whom have lived in the region for several years and who take great pride in their work. With a depletion of this skilled and experienced group of workers, and the possible replacement of these workers with more distant and perhaps less-skilled individuals, we will see a direct and adverse impact on our ability to maintain the generation facilities that continue to operate and, as important, our ability to respond promptly to severe contingencies affecting the operation of these remaining plants in operation. In short, allowing baseload coal and nuclear power plants to close prematurely will have an adverse impact on the reliability of the region's electricity supply and on the reliable operation of the regional electricity system.

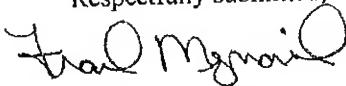
Rates for the sale of electricity that are inadequate to sustain the operation of base load generation facilities that provide reliability and resiliency support cannot be considered to be just and reasonable. Because of the loss of jobs, the significant reduction in payments to local governments, and the decline in electricity resource and grid reliability that would result from

deactivation of the nuclear and coal-fired generating facilities in Ohio, it is essential that the FERC adopt a rule, such as that proposed by DOE, which will ensure that such generating facilities are fully compensated for their costs and will remain in operation.

In order to mitigate the risk that such generating units may be deactivated prematurely, UWUA Local 270 strongly urges FERC to adopt the rule proposed by the DOE as promptly and comprehensively as possible. FERC has a sufficient record to act that will be further bolstered by the comments considered in this proceeding. FERC has thoroughly considered the impact of electric markets on the sustained operation of at-risk power plants and, as noted by the Secretary of the DOE, the time to act is now given the severe impacts to system reliability and resilience, and national security, attendant to the premature closure of crucial power plants. Any protracted delay in creating fully compensatory market rules will only exacerbate the problem of premature closures.

In acting promptly, FERC should also direct the organized market operators to issue a rule that is not only compensatory (and based on the regulatory language of the Proposal) but comprehensive and enduring. The rules to be issued by operators of organized markets should be fair and transparent, and should ensure that critical power plants can continue to operate for the long-term and without the prospect of repeated re-examination and adjustment to their market compensation. The uncertainty that less than comprehensive and enduring market rules will engender will defeat the very purpose of preserving the extended operation of these much-needed power plants.

Respectfully submitted,



Frank Meznarich  
President  
UWUA Local 270

**Johnsen, Steven (MA)**

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**From:** The White House (b) (6)  
**Sent:** Friday, April 13, 2018 1:46 PM  
**To:** ES Central  
**Subject:** Case # 20180330-15755301 for Shelley Wain has been assigned to you.



### **NEW CASE ASSIGNMENT NOTIFICATION**

The following case has been assigned to you:  
Contact Name: Shelley Wain  
Case #: 20180330-15755301

Click on the link to access the case: [20180330-15755301](mailto:20180330-15755301)

The Office of Presidential Correspondence received the enclosed correspondence, which appears to fall within the jurisdiction of your agency. Please respond to the letter within 21 days. Should your agency be unable to respond within 21 days, please issue an interim response to the constituent, indicating that their correspondence has been received by your agency and that a final response will be forthcoming shortly. Please add this interim response to the case as an attachment. Do not close the case with this interim response.

Please indicate in the final response that the correspondence to the President, First Lady, or Vice-President was forwarded by the White House to your agency. In addition, please upload an informational copy of the response to this case for our records and mark the case "Closed - Response Attached." If your agency chooses not to respond, please mark the case "Closed - No Response," and indicate in the case notes the reason that the case should receive no response. Finally, if you think this case does not fall within your agency's jurisdiction, please re-assign by changing the Case Owner to AGL-Agency Redirect Needed. Please provide the name of the agency where you think this case properly belongs in the Case Comments.

Should you have any questions, please contact Richard Henry ((b) (6)) or Dan Horning ((b) (6)).

Please let us know if you need anything else regarding this case.

Thank you.



**White House Agency Liaison Casework**

- [Close Window](#)
- [Print This Page](#)

**Case: 20180330-15755301****Case Information**

Contact Name	Shelley Wain	Case Owner	DOE Agency Representative
Contact Phone		Status	Assigned to Agency
Contact Email	(b) (6)	Agency Tracking ID	
Contact Address	(b) (6)	Agency Detail	

**Description Information**

Who are you trying to contact? **Contact the President**

Description **Hi Mr. President,**

We need help here in PA & OH. First Energy announced the shut down of Nuclear Power Plants in PA & OH. We need to keep our Nuclear Plants & not just rely on Natural Gas.

First Energy would like to protect consumers from this outcome & keep its Nuclear Plants open by receiving "zero emission credits," which would appropriately compensate nuclear energy for not emitting carbon dioxide or other air pollutants. Illinois & NY approved similar measures to keep their nuclear plants running. Closing the reactors would almost certainly cost consumers in long run. The plants are struggling financially because price of natural gas has fallen so far that it is - for now - cheaper than the reactors, assuming you do not value clean air or reliability. The premature closing of nuclear plants would reduce PA & Ohio's energy diversity, worsen air pollution, & raise electricity prices. The problem is once the nuclear plants close, they cannot be restarted. The shutdown decision is permanent, even if historically low natural gas prices may not be.

Low natural gas prices have been a boom to industry & consumers. But why put all our eggs in one basket? Diversity in energy supplies hedges against unexpected shortages or price hikes in any one energy source. During the "polar vortex" of Jan 2014, for example, many natural gas & coal plants suffered outages just when electricity demand was surging to record levels. Meanwhile, operating nuclear power plants across country kept running at near-full capacity & helped avoid blackouts during some of the coldest weather in memory. Shutting down the reactors means consumers will be hit much harder when the unexpected happens. We should also consider the economic impact as well. The Plants contribute millions annually to PA & OH's economy, support thousands of jobs and producing millions in state and local tax revenues.

Please help so we can avoid this expensive mistake.

**System Information**

Case Origin	Contact Us	Assigned To	4/13/2018 1:46 PM
Case Record Type	Agency Portal	Date/Time Closed	
		Assigned To	0.0
		Agency Age	
		Age Alert	
		Priority	None
		Subject	

## Contact Information

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### Contact Information

Name	Mrs. Shelley Wain	Email	(b) (6)
Middle Name		Phone	
Suffix			
Appellation			
Override Google Verification	<input checked="" type="checkbox"/>		

### Address Information

Mailing Unit Type	Other Unit Type
Mailing Unit #	Other Unit #
Mailing Address	(b) (6)
	Other Address

### Special Handling

Military Status
Military Branch
Rank

### System Information

October 13, 2017

Federal Energy Regulatory Commission  
Secretary of the Commission  
888 First Street, NE  
Washington, DC 20426

Re: Grid Resiliency Pricing Rule  
FERC Docket No. RM18-1-000

**COMMENTS OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL  
WORKERS, LOCAL UNION 272 IN SUPPORT OF THE PROPOSED RESILIENCY  
RULE**

On September 28, 2017, the Department of Energy (“DOE”) issued the “Grid Resiliency Pricing Rule” (the “Proposal”) directing the Federal Energy Regulatory Commission (“FERC”) to adopt a rule requiring operators of organized markets to “ensure that certain reliability and resiliency attributes of electric generation sources are fully valued.” Such a rule, as contemplated by the regulatory language of the Proposal, will ensure that existing nuclear and coal-fired electric generating stations in Ohio will be compensated appropriately and fully for their costs of operation and will avoid premature retirement. Adoption of that rule will thus sustain the long-term viability of critical power plants, preserve and create jobs, maintain electric reliability, and provide substantial economic benefits to the many hard-working Americans living throughout the region.

IBEW Local 272 strongly supports the Proposal and shares the Secretary’s urgency that FERC act promptly to direct operators of organized markets to issue the requested rule. FERC has the ability to act, and must act, without undue delay to avoid premature closure of crucial power plants and our members’ loss of critical economic and reliability benefits. FERC has thoroughly examined how electric markets function and how those markets affect the continued operation of crucial power plants needed for reliability for some time. FERC has the requisite basis to act now. There is no time for delay. In addition to acting promptly, FERC should also direct organized

market operators to issue a comprehensive and enduring set of rules, based on the regulatory language of the Proposal, for the proper compensation of critical power plants. Protracted proceedings undertaken by organized market operators that fail to develop fair, compensatory and transparent rules will only engender market uncertainty and delay in providing sufficient compensation to these facilities, thereby jeopardizing the operation of the very plants that the DOE seeks to maintain in operation.

## **I. COMMUNICATIONS**

All communications, correspondence, and documents related to this proceeding should be directed to the following person:

Vic Roppa  
President  
IBEW Local 272  
838 Midland Avenue, Midland, PA 15059  
(b) (6)  
(b) (6)

## **II. DESCRIPTION OF IBEW LOCAL 272**

IBEW Local 272 is a progressive labor organization that represents individuals working in the baseload generation industry.

## **III. DESCRIPTION OF IBEW LOCAL 272'S INTEREST IN PROCEEDING**

IBEW Local 272 is a party to a collective bargaining agreement with the owner of a large baseload coal power plant located in Pennsylvania. As a result, the wages, terms and conditions of employment of our members may be directly affected by the actions taken by the FERC and operators of organized markets in this proceeding. Thus, IBEW Local 272 members have a direct and substantial interest in this proceeding. As well, the unique perspective of IBEW Local 272 and its members will only serve to enhance the record in this proceeding.

#### IV. COMMENTS

The communities where struggling baseload coal and nuclear power plants are located are dependent on the jobs and economic development opportunities the power plants provide. The recent decline in Pennsylvania's electric power industry, for example, has led to reductions in operations and capital improvement expenditures at numerous power production and manufacturing facilities across Pennsylvania. This has led to extreme hardship for the thousands of union workers employed in this industry as well as their families.

It is imperative that baseload coal and nuclear plants continue to operate in light of these dire circumstances. Baseload coal and nuclear plants in Pennsylvania provide thousands of MWs of reliable power, and provide union jobs and economic opportunities to IBEW Local 272 members. The Bruce Mansfield generation station directly employs approximately 215 IBEW Local 272 members, and the maintenance and capital improvement work on this plant supports the local economy by creating hundreds of well-paying union jobs for contractors. In addition, this plant contributes millions each year in state and local tax revenues that support local schools, police and fire departments and other vital public services. The loss of jobs, tax revenue, and the ripple effect of such losses throughout the local economy, will have a severely detrimental impact on the region.

The issuance of a rule preserving the continued operation of resilient baseload coal and nuclear power plants will maintain a reliable supply of electricity for the region's energy-intensive economy in two ways. First, the preservation of certain plants will avoid the need to replace lost generation with imports and the associated construction of infrastructure to facilitate such importation. Preserving baseload coal and nuclear power plants will keep these needed, reliable

facilities running close to home without the need to depend on distant resources, particularly during catastrophic events like severe storms, to fulfill our region's dynamic need for reliable electricity.

Second, premature plant closures will deplete the stable of highly skilled (and specifically trained and experienced) employees, many of whom have lived in the region for several years and who take great pride in their work. With a depletion of this skilled and experienced group of workers, and the possible replacement of these workers with more distant and perhaps less-skilled individuals, we will see a direct and adverse impact on our ability to maintain the generation facilities that continue to operate and, as important, our ability to respond promptly to severe contingencies affecting the operation of these remaining plants in operation. In short, allowing baseload coal and nuclear power plants to close prematurely will have an adverse impact on the reliability of the region's electricity supply and on the reliable operation of the regional electricity system.

Rates for the sale of electricity that are inadequate to sustain the operation of base load generation facilities that provide reliability and resiliency support cannot be considered to be just and reasonable. Because of the loss of jobs, the significant reduction in payments to local governments, and the decline in electricity resource and grid reliability that would result from deactivation of the nuclear and coal-fired generating facilities in Pennsylvania, it is essential that the FERC adopt a rule, such as that proposed by DOE, which will ensure that such generating facilities are fully compensated for their costs and will remain in operation.

In order to mitigate the risk that such generating units may be deactivated prematurely, IBEW Local 272 strongly urges FERC to adopt the rule proposed by the DOE as promptly and comprehensively as possible. FERC has a sufficient record to act that will be further bolstered by the comments considered in this proceeding. FERC has thoroughly considered the impact of

electric markets on the sustained operation of at-risk power plants and, as noted by the Secretary of the DOE, the time to act is now given the severe impacts to system reliability and resilience, and national security, attendant to the premature closure of crucial power plants. Any protracted delay in creating fully compensatory market rules will only exacerbate the problem of pre-mature closures.

In acting promptly, FERC should also direct the organized market operators to issue a rule that is not only compensatory (and based on the regulatory language of the Proposal) but comprehensive and enduring. The rules to be issued by operators of organized markets should be fair and transparent, and should ensure that critical power plants can continue to operate for the long-term and without the prospect of repeated re-examination and adjustment to their market compensation. The uncertainty that less than comprehensive and enduring market rules will engender will defeat the very purpose of preserving the extended operation of these much-needed power plants.

Respectfully submitted,

Vic Roppa  
President  
IBEW Local 272

**From:** Martin Webler  
**To:** AskOE  
**Subject:** Energy Supply Emergency Declaration Ability  
**Date:** Sunday, April 15, 2018 9:14:59 AM

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A factor to be considered in these decisions is the company's position relative to deregulation of portions of their utility business. Specifically, FirstEnergy decided how it would operate in the deregulated markets. Absent a natural or extraordinary disaster, FirstEnergy should not be afforded the benefits that would come from an energy supply emergency declaration, unless they would be willing to return the net financial benefits they received from their deregulated operations to their customers. Thank you.

**From:** David Aubrey  
**To:** AskOE  
**Subject:** 202(c) coal  
**Date:** Sunday, April 15, 2018 11:16:13 AM

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There is no need to bail out coal and nuclear power plants. Our electric grid can and will survive without them.

I am absolutely opposed to using section 202(c) to support uneconomic coal and nuclear power plants.

Rick Perry and Donald Trump are not fooling anyone. This has nothing to do with national security. It is a blatant handout to wealthy contributors who bet on the wrong technology.

**From:** Apophenia  
**To:** AskOE  
**Subject:** 202c bail-out of FirstEnergy  
**Date:** Sunday, April 15, 2018 11:09:39 PM

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Dear DOE,

FirstEnergy is not good at managing or operating utility assets. They, and Robert Murray, are asking for hand-outs -- and this after making large political donations to the current administration.

I would find it impossible to view a bail-out as anything other than bought-and-paid-for crony capitalism of the worst kind.

I strongly urge you to refuse the request.  
sincerely,  
Keith Campbell

**From:** Rob Donahue  
**To:** AskOE  
**Subject:** Section 202c  
**Date:** Sunday, April 15, 2018 10:42:09 PM

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To whom it may concern,

I strongly believe section 202c should solely be limited to disaster recovery purposes. By enabling the use of section 202c to bail out struggling, legacy energy sectors we are disregarding both natural market forces and poor business practices of those entities.

-Rob

Sent from my iPhone

**From:** J. Andrew Eichelberger  
**To:** AskOE  
**Subject:** Section 202(c)  
**Date:** Sunday, April 15, 2018 10:56:48 PM

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Please do not use FPA section 202(c) to aid First Energy. Keeping coal power plants running is not a matter of national security, particularly now, when there is no weather or war-related crisis involved.

Thanks-----Andy Eichelberger, Winchester, MA

**From:** Richard Giddeon  
**To:** AskOE  
**Subject:** 202(c)  
**Date:** Sunday, April 15, 2018 1:29:22 PM

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Hello,  
My name is Richard Giddeon (b) (6)

I'm very familiar with both forms of electricity production. To me it is inconceivable that we would shut down the large base loaded generators such as nuclear and coal where the related fuel supply is located on site. During any emergency there is a substantial reserve of fuel ready to be converted to electricity in the form of coal in the coal yard and uranium in a reactor. In addition, the large generators provide stability to grid frequency simply because of the mass of the rotors in the generators. In the case of large nuclear plants these rotors typically weigh 200 tons. This rotating mass provides stability to the grid in a way that small generators do not. The smaller gas turbines have two MAJOR flaws. First, they require a constant supply of gas from off site, in some cases from hundreds of miles away. Second they are generally much smaller and do not provide the frequency stability that the large generators provide to the grid. A disruption of the gas pipelines and associated infrastructure will cause immediate failure of the power grid in localized areas. The more dependent we become on Gas Turbines, the more the grid is likely to experience major disruptions related to fuel supply.

(b) (6)

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implore the DOE to use whatever regulations are necessary to keep large scale power generation units with on-site fuel running to support the stability of the US Power Grid.

A large loss of power anywhere in the US at any time will constitute a National Emergency with horrendous negative results. i.e. see Puerto Rico after the 2017 Hurricane season.

Regards,

Richard Giddeon

**From:** Larry Glass  
**To:** AskOE  
**Subject:** Sustaining Nuclear Power  
**Date:** Sunday, April 15, 2018 5:19:37 PM

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Nuclear electric power generation is a non-polluting, stable source of power for the nations power grid. The notion that solar and wind power are suitable platform for a stable grid is questionable at best. Gas fired plants are economical at present, yet this is a commodity that can change in cost in the global market unpredictably.

I urge the DoE to step forward to assure we maintain the US Nuclear generating plants through at least the current licensing period to allow for a comprehensive review of the US grid and future electrical power requirements.

Larry Glass  
(b) (6)

**From:** Mark Hattersley  
**To:** AskOE  
**Subject:** Use of Federal Power Act - Let the Market Decide!  
**Date:** Sunday, April 15, 2018 1:15:32 PM

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Dear DOE:

My Subject line says it all.

We are not facing an energy emergency. Do not prop inefficient components of our energy supply. In the long run, it will cost us all much more than is immediately apparent. Let the market pick the winners here.

Thank You.

Mark C Hattersley  
(b) (6)